

RHODE ISLAND PUBLIC TRANSIT AUTHORITY

705 Elmwood Avenue
Providence, RI 02907

GENERAL GUIDELINES FOR COMPLETING REQUEST FOR BID PACKAGE

This document is intended as a guideline to assist prospective Bidders in successfully completing the necessary Bid paperwork. You are strongly encouraged to read the Instructions for Bidders Sections very carefully. This document is NOT intended to replace the more-detailed instructions that are included in the attached Bid Package.

- It is **EXTREMELY IMPORTANT** that all required forms be filled out completely. Federal and State Regulations mandate that these forms be filled out properly. Failure to fill out these forms may result in your Bid being ruled non-responsive. Non Responsive Bids **will not** be awarded the contract.
- **REMEMBER to completely fill out** all REQUIRED FORMS (see REQUIRED FORMS Checklist). The **forms that are checked off are the only ones that apply to this Bid.**
- If a form does not apply to your business or Bid please mark the form Not Applicable or some other similar wording at your discretion.
- DBE (Disadvantaged Business Enterprise) Obligation. RIPTA agrees to ensure that DBES as outlined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts. Therefore it is imperative that you read the DBE Section and complete the necessary Paperwork. All DBEs submitted must be certified by the State of Rhode Island at the time of Bid submittal.
- Make Sure the Bid Response is received by the RIPTA Purchasing Department by the designated date and time. Late Bids will not be accepted
- It shall be the responsibility of prospective Bidders to check the State of Rhode Island, Department of Administration Division of Purchases Website for any addenda.
- Make Sure that the Bid is returned in an Envelope or Box **CLEARLY LABELED** with the following Information: **Bid Number and what the Bid is for. This information should be in the lower left hand corner.** The envelope should also be labeled **Bid DOCUMENTS ENCLOSED**
- When in doubt, contact RIPTA Contracts Manager 401) 784-9500 extension 214 for assistance.
- **Bid must be submitted pre-punched for standard three ring binders. Spiral bound Bid submittals will not be allowed.**

Please refer to Page 79 for Scope of Work

The following label shall be affixed to the envelope or package containing the Bid response documents. It is imperative that his label be affixed to insure the Bid documents are received and routed in the proper manner:

Return Address

BID DOCUMENTS ENCLOSED

CONTRACTS MANAGER
Rhode Island Public Transit Authority
Purchasing Department
Room 217
705 Elmwood Avenue
Providence, RI 02907

BID NUMBER: 13-01

BID FOR: Solar Roofing Project

DUE: August 2, 2012

RHODE ISLAND PUBLIC TRANSIT AUTHORITY

705 Elmwood Avenue
Providence, RI 02907

REQUIRED COMPANY INFORMATION FORM

The following information is mandatory; Failure to complete this section may jeopardize your eligibility to be awarded the contract.

THIS INFORMATION IS REQUIRED IN ACCORDANCE WITH 49CFR 26.11

**THIS FORM IS REQUIRED FOR ALL BIDDERS, PRIME CONTRACTORS,
POTENTIAL SUBCONTRACTORS AND SUBCONTRACTORS**

PLEASE PRINT OR TYPE YOUR INFORMATION

COMPANY NAME _____

COMPANY STREET: ADDRESS: _____

COMPANY MAILING: ADDRESS: _____

COMPANY CONTACT PERSON: _____

COMPANY TELEPHONE NUMBER: _____

COMPANY TELEFAX NUMBER: _____

COMPANY CONTACT EMAIL: _____

AGE OF THE FIRM (YEARS): _____

ANNUAL GROSS RECEIPTS (DOLLARS): _____

IS YOUR FIRM CERTIFIED BY THE STATE
OF RHODE ISLAND AS A DISADVANTAGED
BUSINESS ENTERPRISE ? _____

DUNN AND BRADSTREET NUMBER: _____

NAICS CODE: _____ INDUSTRY _____

NAICS Code can be found at the following website: www.naics.com

COMPANY STATUS: _____ PRIME CONTRACTOR _____ SUBCONTRACTOR

RHODE ISLAND PUBLIC TRANSIT AUTHORITY
Invitation for Bids Number 13-01

INVITATION FOR BIDS

BID NO: 13-01

DATE OF INVITATION: July 2, 2012

PRE-BID MEETING: July 18, 2012

BID RECEIPT DATE: August 2, 2012

FURNISHING OF: Solar Roofing Project

FEDERAL TRANSIT ADMINISTRATION PROJECT NO. RI 90x001,
RI 88X001 and
Pending FTA
Grants

The participant shall specify the official name of his/her company in the upper left-hand corner of the Bid Response Envelope and show **BID NO: and Bid Description in the lower left-hand corner and send or deliver to:**

Purchasing Department
Room 217
705 Elmwood Avenue
Providence, RI 02907

The participant shall execute the offer form enclosed herewith.

Bids will be reviewed and evaluated; all participants will be notified as soon as approval of award is made.

The Bidder shall execute the offer form enclosed herewith. The Bidder shall return **Six copy(ies)** with the **original** Bid.

RIPTA RESERVES THE RIGHT TO REJECT BIDS FROM PARTICIPANTS WHO HAVE NOT USED THE FORM AND PROPER BID RESPONSE ENVELOPE FORMAT.

RIPTA RESERVES THE RIGHT TO CANCEL ANY PARTICULAR SOLICITATION, AND/OR REJECT ANY OR ALL BIDS.

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RHODE ISLAND PUBLIC TRANSIT AUTHORITY
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I. CALENDAR

A. Date of Invitation:

July 2, 2012

B. Pre-Bid Conference:

1. **Date:** **July 18, 2012**

2. **Time:** **10:00 a.m. Eastern Time**

3. **Place:** **RIPTA Board Conference Room**
269 Melrose Street, Providence, RI

Any and all appeals must be submitted in writing prior to the time and date set for the Pre-Bid Meeting.

C. Request for Approved equals and Questions

must be submitted **ELECTRONICALLY IN MICROSOFT WORD FORMAT** to RIPTA Contracts Manager by:

1. **Date:** **July 18, 2012**

2. **Time:** **10:00 a.m. Eastern Time**

3. **Response to approved equals: 10 - 14 days prior to Bid opening.**

D. Bid Receipt:

1. **Date:** **August 2, 2012**

2. **Time:** **1:00 p.m. Eastern Time**

RHODE ISLAND PUBLIC TRANSIT AUTHORITY
Invitation for Bids Number 13-01

II. NOTICE TO OFFERORS

A. DATE: July 2, 2012

The Rhode Island Public Transit Authority (RIPTA) is requesting Bids for the following:

Solar Roofing Project

All Bids shall be submitted in the required format and quantity as set forth in the RFP. This Bid must be received by August 2, 2012 at 1:00 p.m. Eastern Time by the Purchasing Department, Room 217, 705 Elmwood Avenue Providence, Rhode Island 02907.

Award of contract is subject to financial assistance of 80% from the U.S. Department of Transportation (FTA Project RI 90x001, RI 88X001 and Pending FTA Grants) and 20% from RIPTA. The successful Bidder shall comply with the conditions and terms applicable thereunder.

A Pre-Bid Meeting will be held at the RIPTA Transportation Building Conference Room, 269 Melrose Street Providence, RI at 10:00 am Eastern Time on July 18, 2012.. Bidders are expected to download and review the Bid Scope of Work prior to the pre-Bid meeting.

The successful Bidder shall be required to comply with all applicable Equal Opportunity and Disadvantaged Business Enterprise regulations. Bidders are encouraged to view the Rhode Island Minority Business Enterprise (RIMBE) website for a list of Disadvantaged Business Enterprise vendors that may be interested in working with your company on this Bid. All DBEs submitted must be certified by the State of Rhode Island at the time of Bid submittal. The RIMBE Website address is: <http://www.mbe.ri.gov/search.php>.

The Disadvantaged Business Enterprise goal for this project is: 6.%

The successful Bidder shall be required to certify that he is not on the Comptroller General's List of Ineligible Contractors.

An electronic copy of the RFP is available on the State of Rhode Island, Department of Administration, Division of Purchases Website. The website address is: www.purchasing.ri.gov/RIVIP/ExternalBidSearch.asp. RIPTA Requests for Bids can be Public Bid Opportunities, Quasi Public Sector, listed under the Rhode Island Public Transit Authority. ***Bidders must download the Bid documents and complete the required forms.***

If you are unable to access the Internet; a printed copy of the Bid may be obtained from RIPTA's Purchasing Department by calling Michael J. McGrane at (401) 784-9500, ext. 214.

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III. CONTACT LIST

**PLEASE CONTACT THE FOLLOWING PERSONS FOR ANY
QUESTIONS YOU MAY HAVE:**

A. Specifications/Scope of Work

Mr. John Braga
Phone (401) 784-9500 extension 119
or
Mr. Edward Scott
Phone (401) 784-9500 extension 140

B. Contracts Manager

Mr. Michael J. McGrane
Phone: (401) 784-9500 extension 214
mmcgrane@ripta.com

C. DBE Liaison Officer

Mrs. Lisa Hanson
Phone: (401) 784-9500 extension 125.
lhanson@ripta.com

RHODE ISLAND PUBLIC TRANSIT AUTHORITY
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IV. INSTRUCTIONS FOR BIDDERS

A. Definition of Terms.

Whenever herein or in the Bid contract documents the following terms, pronouns or abbreviations are used, the intent and meaning shall be interpreted as follows:

1. **Procuring agency**
Procuring Agency is defined as the Rhode Island Public Transit Authority.
2. **RIPTA**
RIPTA shall refer to the Rhode Island Public Transit Authority.
3. **Contractor**
Contractor shall mean the successful Bidder to whom a contract is awarded.
4. **Request for Bid (RFP)**
Request for Bid shall mean the complete assembly of related documents, whether attached or incorporated by reference, furnished by RIPTA for the purpose of proposing, including the Request for Bid, the Instructions for Bidders, Supplemental Conditions, Specifications, Bid Form, Bid Attachments, and Addenda, if any. Bids shall be in strict accordance with the Terms of the RFP.
5. **Authorized Signature.**
The person who is executing this contract on behalf of the Bidder and who is authorized to bind the Bidder.
6. **Request for Bid.**
The advertisement of the issuance by RIPTA of a Request for Bid, which is published, posted and sent to prospective Bidders informing interested persons of the proposed procurement.
7. **Bid Evaluation Factors/Criteria**
Evaluation Factors/Criteria given in the scope of work are not listed in order of priority. The order of the listing has no relationship to the relative importance of the factors.
8. **Basis of Award**
The Contract will be awarded to the vendor that submits the Bid that is rated the overall best value to the Authority.
9. **Notice of Award.**
The receipt of a Purchase Order or Letter of Contract issued by RIPTA shall serve as notice of the award of contract.
10. **Specifications.**
The written description and statement of necessary requirements of the equipment/construction, supplies and/or service to be provided.
11. **Tender**
The Bidder's documents and all attachments tendered in response to the Bid requests.

RHODE ISLAND PUBLIC TRANSIT AUTHORITY

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B. Form of Bid and Signature.

The Bid shall be presented with an original and Six copies on the forms provided herewith by RIPTA and shall be enclosed in a sealed envelope marked and addressed as required on the Bid form.

Depending upon whom the Bid is made by, the following signature and instructions must be followed:

1. **Sole Owner.**

Bid shall be signed with his full name, and his address shall be given.

2. **General Partnership.**

Bid shall be signed with the partnership name by a partner who shall also sign his/her own name, and the name and address of each partner shall be given.

3. **Limited Partnership**

Bid shall be signed with the partnership name by a general partner who has authorization to do so who shall also sign his/her own name.

4. **Corporation.**

Bid shall be signed by an officer or other individual who has the full and proper authorization to do so, and the corporate seal shall be affixed to the contract, or if the corporate seal is not affixed to the contract and it is signed by a person other than an officer, there must be attached to the contract a certified copy of a resolution of the corporation authorizing such officer or person to sign written contracts for and on behalf of the corporation.

C. Bid.

The terms of the Bid must not be changed. All blank spaces in said form shall be properly filled. Alterations by erasure or interlineation must be explained or noted in the Bid over the signature of the Bidder. If the unit price and the total amount named by a Bidder for any item, do not agree, **the unit price** alone will be considered as representing the Bidder's intention.

D. Unauthorized Conditions.

Unauthorized conditions, limitations or provisions attached to a Bid will render it informal and may cause its rejection.

E. Submission of Bid.

Prior to the hour specified in the Request for Bid inviting sealed Bids, all Bids shall be delivered to the Contracts Manager at the address shown in the Request for Bid.

Each Bid shall be in a sealed envelope properly labeled on the outside with the Bid number and description. No Bids received after said time or at any place other than the time and place as stated in the Request for Bid will be considered. No Bid electronically transmitted , e.g. email and fax will be considered.

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F. Modification or Withdrawal of Bid.

A Bid may be modified or withdrawn by written or telegraphic notice received in the office designated in the Request for Bid not later than the exact time set for receiving of Bids. A telegraphic notice of modification or withdrawal of a Bid telephoned by the receiving telegraphic office no later than the set for opening of Bids will be considered if the message is confirmed by the telegraph company by sending a copy of a written telegram which formed the basis of the telephone call. A Bid may be withdrawn in person by a Bidder or his/her authorized representative provided his/her identity is made known and he signs a receipt for the Bid if the withdrawal is prior to the exact time set for receiving the Bids. Modifications of Bids and requests for withdrawal of Bids which are received in the office designated in the Invitation for Bids after the exact time set for opening are "late modifications" and "late withdrawals" respectively. A late modification or late withdrawal will be subject to the rules and procedures applicable to late Bids. A late modification of an otherwise successful Bid will be opened at any time it is received. If, in the judgment of the Director of Procurement, it makes the terms of the Bid more favorable to RIPTA, it will be presented to the Contract Manager and Director of Procurement for consideration.

G. Samples

Samples, when required, must be submitted within the time specified, at no expense to RIPTA. If not, destroyed or used up during testing, samples will be returned upon request at the Bidder's expense.

H. Canvass of Bids.

At the hour specified in the Request for Bid, a designee will receive the Bids. An award will be made or Bids rejected by RIPTA within the time specified in the specifications or Bid forms, or if not specified, within a reasonable time after Bids have been opened.

I. Rejection of Bids.

RIPTA reserves the right to reject any and all Bids. The right is reserved to reject any or all Bids, and to waive technical defects as the interest of RIPTA may require. Each Bidder shall be notified if all Bids are rejected.

J. Sales Tax Exemption.

RIPTA confirms there are no state, local or federal taxes applicable to this purchase.

K. Delivery Charges.

Unless otherwise stated in the RFP, Bidders shall include freight and/or delivery charges in the total price of their Bids.

L. Alternative Bid

Submissions of an alternative Bid or Bids, except as specifically called for in the Specifications or RFP, will render the Bid informal and may cause its rejection.

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M. Non-Collusive Affidavit.

The Bidder represents and warrants that its Bid is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the Bidder has not, directly or indirectly, induced or solicited any other Bidder to submit a sham Bid or any other person, firm or corporation to refrain from proposing, and that the Bidder has not in any manner sought by collusion to secure itself an advantage over any other Bidder.

N. Interest of RIPTA Personnel.

The Bidder represents and warrants that neither the General Manager, nor any Board Member, nor any employee of RIPTA, is in any manner interested directly or indirectly in the Bid or in the contract, which may be made under it, or in any expected profits to arise therefrom.

O. Penalty for Collusion.

If at any time it shall be found that the person, firm or corporation to whom a contract has been awarded has, in presenting any Bid or Bids, colluded with any other party or parties, then the contract so awarded shall be **voidable** by RIPTA and the Contractor and his bondsmen shall be liable to RIPTA for all loss or damage which RIPTA may suffer thereby and the RIPTA Board may advertise for a new contract for said labor, supplies, materials, equipment or service.

P. Bid Acceptance Period

All Bids shall remain in effect one hundred twenty (120) calendar days from the date of Bid opening. Bids offering less than one hundred twenty (120) calendar days for acceptance by RIPTA from the date set for opening will be considered non-responsive and will be rejected.

Q. Postponement.

RIPTA reserves the right to postpone, for its own convenience, the date the Bid is to be received, but any Bidder whose Bid has already been submitted to RIPTA when the decision to postpone is made shall be afforded the opportunity to revise or withdraw its Bid.

R. Amendment and/or Postponement.

RIPTA reserves the right to revise or amend the specifications up to the time set for the receiving of Bids. Such revisions and addenda, if any, shall be announced by addenda to this solicitation. It shall be the responsibility of prospective Bidders to check the State of Rhode Island, Department of Administration Division of Purchases Website for any addenda. If the revisions and addenda require changes in quantities or price Bid, or both, the date set for receiving Bids may be postponed by such number of days as in the opinion of RIPTA shall enable Bidders to revise their Bids. In any case, Bid openings shall be at least seven (7) working days after the last addendum, and the addenda shall include an announcement of the new date, if applicable.

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S. **Single Bid.**

1. In the event a single Bid is received, RIPTA will, at its option, either conduct a price and/or cost analysis of the Bid and make the award by negotiation or reject the Bid and re-advertise. A price analysis is the process of examining the Bid and evaluating a prospective price without evaluating the separate cost elements. Price analysis shall be performed by comparison of the price quotations submitted on other current quotations, with published price lists, or other established or competitive prices. The comparison shall be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto.

2. Where it is impossible to obtain a valid price analysis, it may be necessary for RIPTA to conduct a cost analysis of the Bid price. Cost analysis is the review and evaluation of a contractor's cost or pricing data and of the factors applied in projecting from such data the estimated costs of performing the contract, assuming reasonable economy and efficiency.

3. The price and/or cost analysis shall be made by RIPTA's Procurement Department.

T. **Qualifications for Award.**

The Bidder must be a person, firm or corporation that:

1. Has in operation, or has the capability to have in operation, a manufacturing plant adequate to assure delivery of all equipment within the time specified under this contract.

2. Has adequate service personnel, or has the capability to have such personnel, to satisfy any service problems that may arise during the warranty period.

3. Has the necessary facilities and financial resources or has the capability to obtain such facilities and resources to complete the contract in a satisfactory manner within the required time.

4. The Procuring agency shall have the right to conduct a pre-award survey on each Bidder. Doubt as to the capability or technical ability, productive capacity or financial strength, which cannot be resolved affirmatively, shall require a determination of non-responsibility by RIPTA.

U. **Ineligible Bidders.**

The Bidder shall be required to certify, upon request, that it is not on the U.S. Comptroller General's Consolidated List of Persons or Firms currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.

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V. Disadvantaged Business Enterprise

The Rhode Island Public Transit Authority will not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. RIPTA will take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Rhode Island Public Transit Authority of its failure to carry out its approved program the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Action of 1986 (31 U.S.C. 3801 et. Seq).

W. Addenda.

RIPTA may issue addenda containing amendments to its Bid solicitation documents. Any addendum issued less than seven (7) days prior to the receipt of Bid shall, if necessary, contain a provision postponing the date of the receipt of Bid to a date that will provide Bidders adequate time to respond to the addenda. Addenda shall be numbered sequentially.

X. Bidder's Requests and Appeals.

1. Appointments.

Bidders and suppliers may make appointments with the contact person listed in the specifications to discuss the specifications.

2. Amending Materials.

Any amending material issued by RIPTA pertaining to the Bid solicitation documents (including, without limitation: clarifications, approved equals, and corrections) shall be set forth in an addendum and sent to all parties who are on record as having obtained a copy of the Bid solicitation documents.

3. Appeal.

Should any Bidder or supplier choose to appeal RIPTA's decision, such appeal must be in writing and received by RIPTA not less than seven (7) calendar days before the date of receipt of Bid. RIPTA has no obligation to consider appeals received less than seven (7) calendar days before the date of the receipt of Bid.

4. Withdrawal.

The Bidder or supplier may withdraw its appeal at any time before RIPTA issues a final decision. There shall be no further review of the appeal after the final decision is issued.

5. Notification.

Should RIPTA postpone the date of the receipt of Bid owing to the appeal, RIPTA shall notify all parties who are on record as having obtained a copy of the Bid solicitation documents that an appeal has been filed and that the date of the receipt of Bid shall be postponed until RIPTA has issued its final decision. RIPTA shall

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issue appropriate amendments postponing the re-scheduling date of the receipt of Bid.

Y. Equal Employment Opportunity.

In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap or national origin. The contractor shall take affirmative action to insure that applicants are employed and that employees are treated during their employment, without regard to their race, religion, color, sex, age, handicap or national origin. Such actions shall include, but not limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.

Z. Prohibited Interest.

No member, officer, or employee of RIPTA or of a local public body during his tenure or for one year thereafter shall have any interest, directly or indirectly, in this contract or the proceeds thereof.

AA. Interest of Members of Congress.

No member or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

BB. Contract Commencement Date.

The contract commencement date shall be the date of the signing of the Purchase Order or by Letter of Contract signed by an authorized RIPTA employee.

CC. Notice, Waiver and Applicable Law.

Notice given to Contractor and RIPTA shall be given to the parties in writing by certified mail at the respective addresses set forth herein. Waiver by RIPTA of a breach by Contractor of any provision of this contract shall not be deemed a waiver of future compliance therewith, and such provision as well of future provisions hereunder, shall remain in full force and effect. The rights and duties of the parties hereto shall be determined by the laws of the State of Rhode Island, and to that end this agreement shall be considered and construed as a contract made an to be performed in the State of Rhode Island.

DD. Protest.

1. General.

Protests will be accepted from prospective Bidders or Offerors whose direct economic interest would be affected by the award of a Contract or by failure to award a contract. The RIPTA Director of Purchasing will consider all protests or objections filed in a timely manner regarding the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot be otherwise resolved, written confirmation of the protest will be requested. Protest submissions should be concise,

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logically arranged, and clearly state the grounds for the protest. Protests must include at least the following information:

- a. Name, address and telephone number of protester.
- b. Identification of the solicitation or Contract number.
- c. A detailed statement of the legal and factual grounds of protest, including copies of relevant documents
- d. A statement as to what relief is requested.
- e. Protest should be sent to:

Director of Procurement
RI Public Transit Authority
Room 217
705 Elmwood Avenue
Providence, RI 02907
- f. Protests must be filed with the RIPTA in accordance with our procedures and time requirements. The protest to RIPTA must be complete and contain all the issues that the protester believes relevant. RIPTA will respond to each substantive issue raised in the protest. Failure to include an issue in the protest eliminates that issue from further consideration. All protest decisions entered by RIPTA are final in accordance with FTA "Third Party Contract" Regulation.
- g. On occasion, when considered appropriate, an informal conference on the merits of the protest with all interested parties may be held.

EE. Protests Before Award

1. Solicitation Phase.

Protests concerning the solicitation must be submitted in writing five (5) working days prior to Bid opening or closing date for receipt of Bids. If the written protest is not received by the time specified, award may be made in the normal manner unless the Director of Purchasing, upon investigation, finds that remedial action is required. Oral protests not followed up by a written protest will be disregarded.

Notice of a protest and the basis therefore will be given to all potential Bidders or Offerors.

2. Pre-Award Phase.

When a protest against the making of an award is received after receipt of Bids but prior to award, the Director of Purchasing may determine to withhold the award pending disposition of the protest. The Bidders or Bidders whose Bids might become eligible for award should be requested, before expiration of the time for acceptance of their Bids, to extend the time for acceptance (with consent of sureties, if any) to avoid the need for readvertising.

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RIPTA will provide a written response to each material issue raised in the written protest.

Where a written protest against the making of an award is received in the time specified, award will not be made prior to five (5) working days after resolution of the protest or, if a protest has been filed with FTA during the pendency of that protest, unless RIPTA determines that:

- a. The items to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make award promptly; or,
- c. Failure to make award will otherwise cause undue harm to RIPTA or the Federal Government.

If award is made, the Director of Procurement will document the file to explain the need for an award, and will give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

FF. Protests After Award.

A protest received not later than 10 (ten) working days after award shall be reviewed by the Director of Purchasing. The Contractor will, in any event, be furnished with the notice of protest and the basis therefore. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Authority's interest, the Director of Purchasing should consider a mutual agreement with the Contractor to suspend performance on a no-cost basis.

GG. Source Selection and Contract Award

The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible Bidder whose Bid will be evaluated using a best value approach. The ultimate selection of an offeror will be on the basis of overall best value to the Authority.

HH. Title VI Assurances

Contractors and subcontractors will be required to comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (49 U.S.C. 2000d), and the Assurances by RIPTA pursuant thereto.

II. Energy Conservation Requirements:

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State of Rhode Island Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

JJ. Program Fraud

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S. C. §

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

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 5307 (n) (1) on the Contractor, to the extend the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

KK. No Government Obligation to Third Parties:

1. The Purchaser and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

JJ. Contract Form . After award, the bidder shall execute a contract for the work substantially in the form attached hereto as Exhibit A hereto.

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V. ADDITIONAL PROVISIONS

A. Definitions:

As used throughout this Request for Proposal, the following terms shall have the meanings set forth below:

1. Authority

Authority means Rhode Island Public Transit Authority (RIPTA).

2. Contracting Manager

the person executing this Contract on behalf of the Authority, and his or her successor, and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

3. Directed, Ordered, designated or prescribed

Wherever in the scope of the work the words directed, ordered, designated, prescribed, or words of like importance are used, it shall be understood that the direction, requirement, order, designation, or prescription of the Contracting Manager is intended and similarly the words approved, acceptable, satisfactory, or words of like importance shall mean approved by, or acceptable to, satisfactory to the Contracting Officer, unless expressly stated.

B. Federal, State and Local Taxes

Except as may be otherwise provided in this RFP, , the bid price includes all applicable Federal, State, and Local taxed and duties. The Authority upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State, or Local tax.

C. Walsh-Healey Public Contracts Act

If this proposal is for the manufacture or furnishing of materials, supplies articles, or equipment in an amount which exceeds or may exceeds or exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contract Act, as amended (41 U.S.C. 34-35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations of the Secretary of Labor which are now or may hereafter be in effect.

D. Officials Not to Benefit

No member, officer, or employee of the Authority during his tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

E. Covenant against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of

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securing business. For breach or violation of this warranty, the Authority shall have the right to annul this Contract without liability or in its discretion, to full amount of such commission, percentage, brokerage, or contingent fee.

F. Notice to the Authority of Labor Disputes

Whenever the Contractor has knowledge that any or potential labor disputes is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer. The Contractor agrees to insert the substance of this clause, in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the Contractor, as the case may be, of all relevant information with respect to such dispute.

G. Patent Indemnity

1. If the amount of this Contract is in excess of \$10,000, the Contractor shall indemnify the Authority and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent arising out of the manufacture or delivery of supplies under this Contract.
2. In addition, if specifically requested by the Contracting Officer prior to execution of the Contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

H. Use of Trade Names

Any trade names used in this document are merely used for a point of reference. The Authority will consider submission of approved equals on any or all products specified. Use of trade names by the Authority bears no actual or implicit approval for the violation of any current or pending patents or copyrights.

I. Rights in Technical Data

1. The Authority shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
 - a. Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - b. Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("for, fit and function: data; e/g/ specification control drawing, catalog sheets, outline drawing; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the

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- source code, algorithm, process, formulae, and flow charts of the software);
 - c. Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor;
 - d. Other specifically described technical data, which the parties have agreed will be furnished without restriction.
- 2. The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph a. in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
 - a. released or disclosed in part by the Authority for manufacture, or
 - b. used in whole or in part by the Authority for manufacture, or
 - c. used by a party other than the Authority except for emergency repair or overhaul work only, by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; provided, that the release or disclosure thereof outside the Authority shall be made subject to a prohibition against further use, release or disclosure.
- 3. Technical data provided in accordance with the provisions of paragraph b. shall be identified by a legend, which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- 4. The term technical data as used in this article means technical writing, computer software, sound recording, pictorial reproductions, drawings, or other representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analysis, and other information incidental to Contract administration. Computer software as used in this article means computer programs, computer databases, and documentation.
- 5. Material covered by copyright:
 - a. The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all technical data now or hereafter covered by copyright.
 - b. No such copyright matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Authority (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the

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Contractor with respect to any technical data delivered hereunder.

6. Relation to patents: Nothing contained in this article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
7. Any dispute under this article shall be subject to the Disputes article of this contract

J. Audit and Inspection of Records

The Contractor shall maintain records, and the Contracting Officer, the State of Rhode Island, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such contractor, involving transactions related to the Contract, for the purpose of making audit, examination, excerpts and transactions.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer, the State of Rhode Island, the U.S. Department of Transportation and the Comptroller General of the United States or any of their Duly authorized representatives shall, until the expiration of three years after final payment under the Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontract, for the purpose of making audit, examination, excerpts and transcription.

K. Gratuities

In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contract, or agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any Director, Officer or employee of the Authority; or to any Director, employee or agent of any of the Authority's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Authority with a view toward securing a contract or securing favorable treatment with respect to the awarding to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The terms of this GRATUITIES article shall be strictly construed and enforced in the event of violations hereto.

L. Limitation on Withholding Payments

If more than one article or schedule provision of this Contract authorized the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest

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amount which may be withheld under any one such article or schedule provision at that time; provided, that this limitation shall not apply to:

1. Withholdings pursuant to any clause relating to wages or hours of employees;
2. Withholdings not specifically provided for by this Contract; and
3. The recovery of overpayment.

M. Certificates of Current Cost or Pricing Data

The Contractor shall provide a Certificate of Current Cost or Pricing Data as required in Subpart 15.804 of the Federal Acquisition Regulations (48 CFR 15.804) in support of any negotiated contract expected to exceed \$100,000 any modification to a formally advertised or negotiated contract on which the aggregate of the increase and decrease in cost are expected to exceed \$100,000; the Contracting Officer at his discretion may request cost or pricing data for modifications on which cost are \$100,000 or less and an attendant certificate of current cost or pricing data.

N. Cargo Preference

Use of United States Flag Vessels

Pursuant to Pub. L 664 (56 U.S.C. 1241 (b)):

"Cargo Preference-Use of United States-Flag Vessels

The Contractor agrees

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the Grantee (through the prime Contractor in the care of subcontractor bills-of lading) and to the Division of National Cargo, Officer of Market Development, Maritime Administration, Washington, D.C. 20230, marked with appropriate identification of the Project.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

O. Buy America Act

The Contractor agrees to comply with 49 U.S.C. §533(j), and its implementing regulations at 49 C.F.R. Part 661, any amendments thereto, and any implementing guidelines issued by FTA.

P. Equal Opportunity

1. **Race, Color, Creed, National Origin, Sex.**

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In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders regulations, and Federal polices that may in the future affect construction activities undertaken in the course of the Project. The contract agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29, U.S.C. § 623 and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities

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

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

Q. Nondiscrimination under Federal Grants

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

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applicable Federal implementing regulations and other implementing requirements FTA may issue.

R. Rights in Data and Copyrights-FTA (June 1996)

The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Example include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.

When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Contractor agrees that FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this contract or a copy of the subject data as defined in subsection a. of this clause and shall be delivered as the Government may direct. Unless prohibited by state law, the Contractor agrees to indemnify, save, and hold harmless RIPTA and the Government, their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify RIPTA and the Government for any such liability arising out of the wrongful acts of employees or agents of RIPTA and the Government.

S. Davis-Bacon Act

40 USC &167; 276a -276a-5 (1998) 29 CFR § 5 (1999)

1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which

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is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - i. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - ii. The classification is utilized in the area by the construction industry; and
 - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - iv. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- c. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the

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classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- d. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- f. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- g. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- h. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an

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additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - ii. The classification is utilized in the area by the construction industry; and
 - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- i. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - j. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - k. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

2. **Withholding**

The Rhode Island Public Transit Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract

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subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the Rhode Island Public Transit Authority may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- b.
 - i. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Rhode Island Public Transit Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out

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accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- ii. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

- c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

- d. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working

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hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. **Apprentices and trainees**

- a. **Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the

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Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- b. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- c. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity

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requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. **Compliance with Copeland Act requirements**
The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts**
The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination: debarment**
A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act requirements**
All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards**
Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
 - a. By entering into a contract pursuant to this RFP, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001

T. Contract Work Hours and Safety Standards Act
40 U.S.C. 327-333 (1995) 29C.F.R. 5 (1995) 29 C.F.R. 1926 (1995)

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1. **Overtime requirements**
No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such to work in excess of forty hours in such workweek unless such laborers or mechanics receive compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability unpaid wages; liquidated damages**
In the event of any violation of the clauses set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clauses set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clauses set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages; liquidated damages**
The Rhode Island Public Transit Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clauses set forth in paragraph (2) of this section.
4. **Subcontracts**
The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section. (Section 102 nonconstruction contracts should also have the following provision:)
5. **Payrolls and basic records**
Payrolls and basic records relating theretoshall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the nams, address, and social security number of each

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worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Beacon Act), daily and weekly number of hours worked, deductions. Whenever the made and actual wages paid Secretary of labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic included the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Beacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

6. Contract Work Hours and Safety Standards Act

The contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

U. Seismic Safety Requirements

42 U.S.C. 7701 et seq. 49 CFR Part 41

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

V. Energy Conservation Requirements

42 U.S.C. 6321 et seq. 49 CFR Part 18

The contractor agrees to comply with 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.

W. Clean Air

42 U.S.C. 7401 et Seq 40 CFR 15.61 49 CFR Part 18

1 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as

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amended, 42 U.S.C. §§ 7401 et Seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

X. Clean Water

1 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et Seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

Y. Recovered Materials

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Z. Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

AA. National Intelligent Transportation Systems Architecture and Standards

The Contractor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy

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on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued

BB. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (9) dated October, 2002) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

CC. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests, which would cause (name of grantee) to be in violation of the FTA terms and conditions.

See A107-2007.

DD. Policy Concerning Federal and Stated False Claim Laws

As required by 42 U.S.C. §1396a(a)(68), the Rhode Island Public Transit Authority ("RIPTA") publishes the following information to all employees, contractors and agents about federal and state False Claims laws and RIPTA's policies to detect and prevent fraud, waste and abuse.

1. Prohibitions Against False Claims **Federal False Claims Act**

The federal False Claims Act, among other things, applies to the submission of claims for payment by Medicare, Medicaid and other federal and state programs. The False Claims Act is the federal government's primary civil remedy for improper or fraudulent claims. It applies to all federal programs, including welfare and health care benefits.

2. Prohibitions of the Federal False Claims Act

The False Claims Act prohibits, among other things:

- a knowingly presenting or causing to be presented to the federal government a false or fraudulent claim for payment or approval;
- b knowingly making or using, or causing to be made or used, a false record or statement in order to have a false or fraudulent claim paid or approved by the government;

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- c conspiring to defraud the government by getting a false or fraudulent claim allowed or paid; and
- d knowingly making or using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government.

“Knowingly” means that a person, with respect to information: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

3. **Enforcement**

The United States Attorney General may bring civil actions for violations of the False Claims Act. As with most other civil actions, the government must establish its case by presenting only a preponderance of the evidence rather than by meeting the higher burden of proof that applies in criminal cases.

The False Claims Act allows private individuals to bring “qui tam” actions for violations of the Act.

EE. American with Disabilities Act

All products, equipment or construction provided in accordance with this contract shall comply with the current version of the Americans with Disabilities Act of 1990 - 42 U.S.C. 12101, et seq. at the time of the solicitation.

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VI. REQUEST FOR APPROVED EQUAL FORM

**This form must be submitted electronically IN MICROSOFT WORD
FORMAT TO RIPTA CONTRACTS MANAGER**

REQUEST FOR APPROVAL EQUAL QUALIFICATION OR CLARIFICATION

Page: _____

Ref: RFP NO. 13-01

Project No. _____

To: Rhode Island Public Transit Authority

From: _____

Page & Reference: _____

Request Description

Use Additional Sheet If More Space Is Required

Accepted: _____

Rejected: _____

See Addendum # _____

Explanation: _____

RHODE ISLAND PUBLIC TRANSIT AUTHORITY

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VII. REQUIRED BID SUBMISSIONS

The following items marked with an "X" must be submitted with Response
Failure to submit forms may result in Bid being deemed non-responsive

Required Company Information Form	<u> X </u>
Solicitation	<u> X </u>
Offer	<u> X </u>
Statement of Eligibility	<u> X </u>
Affidavit of Non-Collusion	<u> X </u>
Certification of Restrictions on Lobbying	<u> X </u>
Buy America Certificate FORM MUST BE SUBMITTED WITH BID, IF CHECKED, OR BID WILL BE CONSIDERED NON RESPONSIVE	<u> X </u>
Disadvantaged Business Enterprise	<u> X </u>
General Contract Compliance Certificate Agreement (EEO)	<u> X </u>
Certification of Primary Participant Debarment (The form must be signed by Legal Counsel)	<u> X </u>
Certification of a Subcontractor (Debarment) Each Subcontractor and potential subcontractor must fill in and sign.	<u> X </u>
Non-Resident Contractor (if applicable)	<u> X </u>
Davis Bacon Act Compliance (there is no form, just certify you will comply)	<u> X </u>
Drug & Alcohol Testing	<u> </u>
Bid Guarantee (Surety)	<u> X </u>
Bid Form	<u> X </u>

The following items marked with an "X" must be submitted AFTER AWARD of the Contract

Performance Bond	<u> X </u>
Certificate of Insurance- (as required in Section XX and the Scope of Work)	<u> X </u>

NOTE:

ITEMS WITHOUT AN "X" AND THEIR RESPECTIVE TERMS AND CONDITIONS ARE NOT REQUIRED IN THIS BID

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VIII. SOLICITATION FORM

COMPANY NAME _____

BID NO. OR PROJECT NO. 13-01

DESCRIPTION Solar Roofing Project

A. BID REQUIREMENTS

Sealed Bids in original and Six copy(ies) will be received at the offices of the Rhode Island Public Transit Authority, 705 Elmwood Avenue Providence, Rhode Island 02907, at the Bid date and hour set forth on the Request for Bid or anytime prior to the date and hour. Late Bids will not be accepted.

B. CONTRACT DOCUMENTS

By executing the offer form enclosed herewith, the Bidder agrees to provide all services set forth on the specifications attached hereto upon the terms and conditions set forth in paragraphs A, B, C and D.

C. PAYMENT SCHEDULE

Payment will not be made until receipt and installation of merchandise is accepted by the Transit Authority.

D. COST FOR SERVICE

Please complete necessary cost information as outlined in the Bid Scope of Work.

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IX. OFFER FORM

Bidder understands that any condition other than stated in the specifications, clarification made to the above, or information submitted on or with this form, other than that requested, may render the Bid non-responsive.

By execution below, Bidder hereby offers to furnish services in accordance with the contract documents that are a part of the specifications, and agrees to fully comply with the contract documents.

BID NO 13-01

BIDDER _____

EMPLOYER IDENTIFICATION NO. _____

NAME _____

ADDRESS _____

CITY/STATE/ZIP _____

TYPE OF BUSINESS ENTITY: (Please check one)

Sole Proprietor _____

Partnership _____

Corporation _____

BIDDER'S CONTRACTING OFFICER

Name (*Please Print*)

Authorized Signature

Title

BIDDERS MUST ALSO COMPLETE THE BID FORM FOUND ON PAGE 81

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X. STATEMENT OF ELIGIBILITY FORM

The _____ hereby certifies that he/she
(Name of Bidder)

is/is not (underscore one) included on the Comptroller General's Lists of Persons or Firms Currently Barred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.

Name of Firm

Address

City, State, Zip

Signature of Authorized Person

Date Authorized

RHODE ISLAND PUBLIC TRANSIT AUTHORITY

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XI. AFFIDAVIT OF NON-COLLUSION FORM

I hereby swear (or affirm) under penalty for perjury:

1. that I am the Bidder (if the Bidder is an individual), a partner of the Bidder (if the Bidder is partnership), or an officer or employee of the proposing corporation having authority to sign on its behalf (if the Bidder is a corporation).
2. that the attached Bid has been arrived at by the Bidder independently, and has been submitted without collusion with, and without agreement, understanding, or planned common course of action with, any other vendor of materials, supplies, equipment, services described in Invitation for Bids, designed to limit independent bidding or competition.
3. that the contents of the Bid has not been communicated by the Bidder or its employees or agents, to any person not an employee or agent of the Bidder or its surety on any bond furnished with the Bid, and will not be communicated to any such person prior to the official opening of the Bid; and
4. that I have fully informed myself regarding the accuracy of the statement made on this affidavit.

Name

Address

City, State, Zip

Signature of Authorized Official

Date Authorized

Subscribed and sworn before me this _____ day of _____, 20____

Notary Public

My commission expires _____

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XII. CERTIFICATION OF RESTRICTIONS ON LOBBYING FORM

I, _____, hereby certify on
(Name/title of Bidder Authorized Official)

behalf of: _____ that:
(Name of Bidder)

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a member of Congress in connection with this Federal contract, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclosure accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20_____.

By _____
(Signature of Authorized Official)

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XIII. BUY AMERICA CERTIFICATION REQUIREMENTS ! **FOR PROCUREMENT OF STEEL OR MANUFACTURED PRODUCTS**

49 U.S.C. 5323(j) and 49 CFR 661 provide that no Federal funds may not be obligated for mass transportation projects unless steel and manufactured products used in these projects are produced in the United States.

If steel or manufactured products are being procured, the appropriate certificate as set forth below shall be completed and submitted by each Bidder.

Certificate of Compliance-The Bidder hereby certifies that it will comply with the requirements of 49 U.S.C. 5323 (j)(1) and the Applicable regulations on 49 CFR Part 661.

COMPANY NAME _____

SIGNATURE _____

TITLE _____

DATE _____

Certification of Non-Compliance-The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j)(1).

COMPANY NAME _____

SIGNATURE _____

TITLE _____

DATE _____

FORM MUST BE SIGNED AND SUBMITTED WITH BID OR BID WILL BE CONSIDERED TO BE NON-RESPONSIVE.

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XIV. BUY AMERICA CERTIFICATION REQUIREMENTS II **OF PROCUREMENT OF BUSES, OTHER ROLLING STOCK AND** **ASSOCIATED EQUIPMENT**

49 U.S.C. 5323 (j) and 49 CFR 661 provide that no Federal funds be obligated for procurement of buses, other rolling stock and associated equipment unless the following conditions are met:

1. The cost of components which are produced in the United States is more than 60 per centum (60%) of the cost of all components of the vehicle or equipment described in this paragraph; and
2. Final assembly of the vehicle or equipment described in this paragraph has taken place in the United States.

If buses or other rolling stock (including train control, communication and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each Bidder in accordance with the requirements.

Certificate of Compliance-The Bidder hereby certifies that it **will comply** with the requirements of the 49 U.S.C. 5323 (j)(2)(c) and CFR Part 661.

COMPANY NAME _____

SIGNATURE _____

TITLE _____

DATE _____

Certificate of non-Compliance-The Bidder hereby certifies that it **cannot comply** with the requirements of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements.

COMPANY NAME _____

SIGNATURE _____

TITLE _____

DATE _____

FORM MUST BE SIGNED AND SUBMITTED WITH BID OR BID WILL BE
CONSIDERED TO BE NON-RESPONSIVE.

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XV. BUY AMERICA PRE-AWARD AND POST-DELIVERY AUDITS:

A. Prior to Contract award,

The apparent successful offeror shall provide to the Authority's auditors the cost of the components and subcomponents to be used in the manufacturing of the rolling stock, their country of origin, the location of final assembly, the activities that will take place at the location and pertinent supporting documentation for the purpose of RIPTA performing the cited Pre-Award Audit of Buy-America requirements.

B. After delivery and acceptance of the vehicles,

The Contractor shall provide to the Authority's auditors the cost of the components and subcomponents used in the manufacture of the rolling stock, their country of origin, the location of final assembly, the activities that took place at the location and pertinent supporting documentation to enable RIPTA to perform the cited Post-Delivery Audit of Buy America Requirements.

C. Authority Review

The contractor shall facilitate the reviews by the Authority's auditors by providing the supporting documentation for the above information in a timely fashion.

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XVI. DISADVANTAGED BUSINESS ENTERPRISES PROGRAM

Bidders are strongly encouraged to have Disadvantage Business Enterprise Participation/Small Business, regardless of the DBE Goal in this Bid.

Disadvantaged Business Enterprise (DBE) Special Provisions

A firm's DBE Participation and/or demonstration of a "Good Faith Effort" will be considered when reviewing submittals for responsiveness. This will be considered when evaluating Bid Responses

A. Policy

1. It is the policy of Department of Transportation (DOT) that the DBE requirements in 49 CFR Part 26, as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26, as amended apply to this agreement.
2. DBE Obligation – RIPTA or its contractor agrees to ensure that DBE's as designed in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, RIPTA or its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBE's have the maximum opportunity to compete for and perform contracts. RIPTA and its contractors shall not discriminate on the basis of race, color, religion, national origin, age or sex in the award and performance of DOT assisted contracts.
3. Contractor Obligation – Contractors and subcontractors failing to carry out the requirement set forth in 1 and 2 above, shall constitute a breach of contract and, after the notification to the Department (DOT), may result in termination of the agreement or contract by RIPTA or such remedy as RIPTA deems appropriate.

B. DBE Utilization

1. **DBE Utilization**
The Contractor agrees to provide for full and fair utilization of Disadvantaged Business Enterprises (DBEs) by complying with the requirements of this clause. Included in these requirements is the achievement of the stated goal for the utilization of DBEs in the performance of work under this contract. Nothing in this clause shall be construed to require the utilization of any DBEs, which is either not qualified or unavailable. **All DBEs submitted must be certified by the State of Rhode Island at the time of Bid submittal. A copy of the DBE Certification Letter from the State of Rhode Island Office of Civil Rights must accompany the Bid submittal**

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2. Utilization Goal

For the purpose of this contract, the goal for utilization of DBEs shall be as follows: 6 DBE percent of the Contract Dollar Amount.

C. Definitions.

The terms used in these special provisions shall be defined as follows:

2. Joint Venture

an association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, efforts, skills and knowledge.

3. Disadvantaged Business

means a small business concern in which is, at least, 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically, disadvantaged individuals who own it.

4. Small Business Concern

a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

5. Socially and Economically Disadvantaged Individuals

means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities of individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act, RIPTA shall make a rebuttal presumption the individuals in the following groups are socially and economically disadvantaged. RIPTA may also determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- a. **Black Americans**, which includes persons having origins in any of the Black racial groups of Africa;
- b. **Hispanic Americans**, which includes persons of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish culture or Portuguese culture, regardless of race;
- c. **Native Americans**, which includes persons who are American Indian, Eskimo, Aleuts, or Native Hawaiians;
- d. **Asian-Pacific Americans**, which includes persons whose origins are Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- e. **Asian-Indian Americans**, which includes persons whose origins are from India, Pakistan, and Bangladesh.
- f. **Disadvantaged Business Enterprise (DBE) Liaison Officer** – the individual designated by the Authority to monitor compliance with these Special Provisions and to assist in their implementation.
- g. **Bidder** – any individual, partnership, joint venture, corporation or firm submitting a Bid for the contract.

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6. Recognition of DBE Commitment

Each Bidder shall recognize RIPTA's commitment to insure that DBE's be afforded full opportunity to participate in contracts awarded by RIPTA and will not be discriminated against on the grounds of race, religion, color, national origin, handicap, age or sex.

7. Submissions

all Bidders shall submit the following information with the Bid by using the Schedule of DBE Participation (Attachment A);

1. The Name and address of each DBE firm that will participate in the contract;
2. A description of the work each named DBE firm will perform; and
3. The dollar amount of participation by each named DBE firm.

The Authority encourages firms located in the United States that are currently certified as DBEs and SBAs by Federal, State and Local agencies to apply for certification in the State of Rhode Island.

If a minority business would like to be certified by the State of Rhode Island contact: Mr. Charles Newton, Department of Administration, 1 Capital Hill, Providence, Rhode Island, 02908, Telephone (401) 222-6253.

If the apparent successful competitor's submission does not satisfy the goal, RIPTA shall determine whether the apparent successful competitor has made good faith efforts to obtain DBE participation in accordance with the guidelines stated in Paragraph F, Sub-paragraph 1, below.

Unsuccessful efforts in gaining DBE participation must be documented on the "DBE Unavailability Certification" attached hereto as Attachment D. Meeting the DBE contract goals or making good faith efforts to meet the goals is a condition of receiving a Federal Transit Administration assisted contract for which contract goals have been established by RIPTA.

The legitimacy of each DBE or disadvantaged-majority joint venture shall be determined by RIPTA, based on the information submitted in the affidavits attached hereto as Attachments C and D. RIPTA will require all prime contractors to make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE. RIPTA shall approve all substitutions of subcontractors **before** award of contract and **during** contract performance, in order that substitute firms are eligible DBE's.

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8. Procedure Prior to Contact Award

a. Guidance Concerning Good Faith Efforts to Meet DBE Contract Goals.

RIPTA may decide that a competitor that has failed to meet DBE contract goals may receive the contract upon determining that the efforts the competitor made to obtain DBE participation were “good faith efforts” to meet the goal. RIPTA shall not consider efforts that are merely pro forma to be good faith efforts to meet the goals, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of DBE participation sufficient to meet the goals. In order to award a contract to a competitor that has failed to meet DBE contract goals, RIPTA must determine that the competitor’s efforts were those that, given all relevant circumstances, a competitor, actively and aggressively seeking to meet the goals would make.

Following is a list of the kinds of efforts RIPTA may consider. The list is not exclusive or exhaustive and in appropriate cases RIPTA shall consider other relevant factors or types of efforts. RIPTA shall consider not only the different kinds of efforts the contractor has made, but also the quantity and intensity of those efforts. All information must be in writing and copies of all ads, written notices, follow-up letters and/or all other correspondence must be presented whenever a waiver is asked for.

RIPTA will consider the following efforts:

- i. whether the contractor attended any pre-solicitation or pre-Bid meetings that were scheduled by RIPTA to inform DBEs of contracting opportunities;
- ii. whether the contractor advertised in general circulation, trade association, and disadvantaged focus media concerning the sub-contracting opportunities;
- iii. whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow the DBEs to participate effectively;
- iv. whether the contractor followed up initial solicitation of interest by contracting DBEs to determine with certainty whether the DBEs were interested;
- v. whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation;
- vi. whether the contractor provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;

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- vii. whether the contractor negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- viii. whether the contractor made efforts to assist interested DBEs in obtaining bonding lines of credit, or insurance required by RIPTA or contractor; and
- ix. whether the contractor effectively used the services of available disadvantaged community organizations, disadvantaged contractor's groups, Local, State and Federal disadvantaged business assistance offices, and other organizations that provide assistance in the recruitment and place of DBEs.

9. Bid, Execution & Compliance with Subcontracts

Prior to the execution of a contract between RIPTA and the successful Bidder, the Bidder shall present, for RIPTA's approval, DBE subcontracts corresponding in all respects to the proposed agreements. Upon approval by RIPTA, the successful Bidder shall enter into each such approved DBE sub-contract and shall thereafter neither terminate such DBE nor reduce the scope of the work to be performed by, or decrease the price to be paid to, the DBE and the disadvantaged non-disadvantaged joint venture thereunder without in each instance the prior written approval of RIPTA.

10. Substitution of Subcontractors

RIPTA shall review for its approval all substitutions of subcontractors in order to determine if the percentage goal will be decreased by substitution of a disadvantaged contract/supplier with a non-disadvantaged contractor/supplier.

Where RIPTA has approved termination of a sub-contract held by an DBE or disadvantaged non-disadvantaged joint venture, the successful Bidder shall make every reasonable effort to propose and enter into an alternative sub-contract or subcontracts for the same work to be performed by another qualified DBE for a contract price or prices totaling not less than the contract price of the terminated sub-contract. Satisfactory evidence of reasonable efforts shall be timely furnished by RIPTA.

11. Program Compliance

At all times, discrimination on the basis of race, color, religion, national origin, handicap, age or sex will not be tolerated. RIPTA will monitor the schedule for participation by disadvantaged contractors in an effort to isolate those prime contractors who do not adhere to the non-discriminatory policies of RIPTA. If such contractor fails to respond to counseling with respect to the disposition of subcontracts pertaining to RIPTA funds, RIPTA reserves the right to terminate the contract and to consider future Bids of such contractor to be non-responsive in the absence of written assurance from it of the full opportunity for DBEs to participate in its awards of subcontracts, together with the follow-up to verify such participation.

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12. Maintenance of Records

All records relating to the contract shall be maintained by the contractor for a period of three (3) years after project completion.

13. Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

14. Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Rhode Island Public Transit Authority. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above reference time frame may occur only for good cause following written approval of the Rhode Island Public Transit Authority. This clause applies to both DBE and non-DBE subcontractors. RIPTA reserves the right to hold payments to the Contractor if payments verification logs are not submitted within 30 days of payments. Failure to submit payments to DBE subcontractors within 30 days will result in action by RIPTA up to and including disqualification from any future RIPTA Procurements.

15. Monitoring Payments to DBEs

RIPTA requires that prime contractors to maintain records and documents of payments to DBEs following the completion of the contract. These records will be made available for inspection upon request by any authorized representative of RIPTA or United States Department of Transportation. This requirement also extends to any DBE Subcontractor. Reports of payments to DBE Subcontractors shall be provided to the RIPTA DBE Liaison Officer on a monthly basis. Failure to submit these reports on a timely basis may result in delay of payments.

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XVII. DISADVANTAGED BUSINESS ENTERPRISE REQUIRED FORMS

Attachment A: Schedule of DBE Participation

Submitted if DBE firm or firms will be participating in the Bid.

Attachment B: DBE Application Agreement

Submitted if DBE firm or firms will be participating in the Bid.

Attachment C: Letter of Intent to Perform as a Subcontractor

Submitted if DBE firm or firms will be participating in the Bid

Attachment D: DBE Unavailability Summary Sheet

Submitted if DBE firm or firms you have contacted cannot participate.

This form is used to document good faith effort. This form only needs to be completed when there is a DBE Participation Goal.

Attachment E: Narrative Explanation for Lack of DBE Participation

Submitted by the Prime Contractor to explain lack of DBE/SBA participation.

Attachment F: Documentation of DBE Utilization

To be filled in by the DBE firm and the prime contractor once the DBE Subcontractor has been paid.

Please Note: Final payment to the Prime Contractor will be held until this form or forms are received for each DBE Subcontractor.

DBE FIRMS PROPOSING AS A PRIME CONTRACTOR: the following forms must be filled in, signed and submitted with the Bid

Attachment A, Attachment B

Please state, on these forms, that you are proposing as a prime contractor.

CERTIFICATION LETTER OR NOTIFICATION MUST BE INCLUDED FOR EACH DBE FROM THE STATE OF RHODE ISLAND.

Please record by letter (using the list below) under the DBE Category Column found on Attachment A: Schedule of DBE Participation Form on the following page

- a. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
- b. "Hispanic Americans", which includes persons of Mexicans, Puerto Rican, Cuban, Central or South America, or other Spanish culture or Portuguese or origin, regardless of race;
- c. "Native Americans", which include persons who are American Indian, Eskimos, Aleuts, or Native Hawaiians;
- d. "Asia-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
- e. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh; and
- f. any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act.

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SCHEDULE OF DBE PARTICIPATION

A. Attachment A

Company Name: _____
 Project Number: 13-01 Project: Solar Roofing Project

*Please provide copy of DBE Certification Letter for each DBE firm listed from the Rhode Island Office of Civil Rights. **DBE Vendors must be certified in the State of Rhode Island at the time of Bid Submittal to be considered. A full, up to date list of Rhode Island DBEs can be obtained at the following website: www.mbe.ri.gov/**

DBE Firm Name	DBE Firm Address	DBE Category	Phone Number	Contact Name	Work to be Performed	Estimated Value Dollars	Estimated Value Percent of Bid

The undersigned will enter into a formal agreement with Disadvantaged Business Enterprise firms for work listed in this schedule conditioned upon execution of a contract with the Rhode Island Public Transit Authority.

Authorized Signature of Bidder Official _____

*Use additional forms as needed.

Each DBE Firm listed in the Section must also complete the Required Company Information Form and the Certification of Subcontractor Form (Page 74)

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LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

C. Attachment C

To: _____
(Name of Prime or General Bidder)

The undersigned intends to perform work in connection with the above project as (check one):

___ an individual

___ a corporation

___ a partnership

___ a joint venture

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed).

for the following compensation: _____

(Name of DBE Contractor)

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XVIII. PERFORMANCE BOND INFORMATION

The selected Bidder shall furnish, within twenty (20) calendar days (if required) after the date of notice of award of contract by RIPTA, a Performance and Payment Bond in the amount of 100% of the Bid amount covering the faithful performance of the contract.

The Performance Bond is to be secured through an insurance company or companies which is licensed in the State of Rhode Island or which is approved by the Authority.

The Bond will remain in effect throughout the warranty period.

XIX. BID GUARANTEE (SURETY)

A Bid Guarantee (if required) shall be submitted with the Bid response. This guarantee shall be equivalent to five (5) percent of the Bid price. The "Bid guaranty shall consist of a firm commitment such a bid bond, certified check, or other negotiable instrument accompanying a Bid as assurance that the Bidder will, upon will, upon acceptance of its Bidder, execute such contractual documents as may be required within twenty (20) calendar days after the date of notice of award of contract by RIPTA.

XX. REQUIRED INSURANCE

The Bidder will be required to secure and maintain the following insurance coverages:

Bidder must obtain Insurance Coverages listed in APPENDIX ONE

Bidder shall provide to RIPTA Contracts Manager a Certificate of Insurance upon award of contract. This Certificate shall be kept in effect at all times. Current copies shall be provided to the Contracts Manager

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XXI. GENERAL CONTRACT COMPLIANCE CERTIFICATE AND AGREEMENT

RHODE ISLAND STATE EQUAL OPPORTUNITY OFFICE

The undersigned Contractor agrees and certifies, unless otherwise exempt, that it is in compliance with the applicable requirements of Federal Executive order No. 11246, as amended, Rhode Island General Law 28-5.1-10, and other regulations as issued by the Rhode Island Public Transit Authority, as set forth below, or will take steps to comply with such requirements prior to acceptance of any order from us. This agreement and certificate shall form a part of, and be deemed incorporated in, each order submitted to you for supplies or services exceeding \$10,000. Failure to comply will be considered a substantial breach of the contract.

A. 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 natural 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, 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 by the contracting officer setting forth the provisions of the non-discrimination clause.
2. The Contractor will, in all solicitations or advertisements for placed by or on behalf of the contractor, state that all qualified applicants will receive consideration 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/she has collective bargaining agreement or other contract or understanding a notice, advising the labor union or worker's representative of the Contractor's commitments under Section 202 of Federal Executive order No. 11246, as amended, Rhode Island Law 28-5.1-10, and other regulations and relevant orders of the Secretary of Labor.
4. The Contractor will comply with all provisions of Federal Executive Order No. 11246, as amended, Rhode Island General Law 28-5.1-10, and other regulations and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246, as amended, Rhode Island General Law 28-5.1-10 and other regulations as issued by the State of Rhode Island, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the State Equal

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- Opportunity Office 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 non-compliance with the non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or part, and the Contractor may be declared ineligible for further State contracts in accordance with procedures authorized in Federal Executive Order No. 11246, as amended, Rhode Island General Law 28-5.1-10 , and other regulations as issued by the State of Rhode Island, and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246, as amended; Rhode Island Public Transit Authority, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law, or the State of Rhode Island and Providence Plantations.
 7. The Contractor will include the provisions of paragraphs (1) through (7) in every sub-contract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Federal Executive Order No. 11246, as amended, Rhode Island General Law 28-5.1-10, and other regulations as issued by the Rhode Island Public Transit Authority, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any sub-contract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States and the State of Rhode Island to enter into such litigation to protect the interest of the United States and the State of Rhode Island.

B. Age Discrimination

Pursuant to Federal Executive Order No. 11246, as amended, the Contractor will not, in connection with the employment, advancement or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan or statutory requirement, nor will the Contractor specify, in solicitations or advertisements for employees, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan or statutory requirement.

C. Employment of the Handicapped

1. Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat

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- qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rates of selection for training, including apprenticeship.
2. Contractor agrees that if a handicapped individual files a complaint with him/her that he/she is not complying with the requirements of the Rehabilitation Act of 1973, he/she will (1) investigate the complaint and take appropriate action consistent with requirements of 41 CFR Part 60-741.29 and (2) maintain on file for three years, the record regarding the complaint and the actions taken.
 3. Contractor agrees that if a handicapped individual files a complaint with the Department of Labor that he/she has not complied with the requirements of the act, (1) he/she will cooperate with the Department in its investigation of the complaint, and (2) he/she will provide all pertinent information regarding his/her employment practices with respect to the handicapped.
 4. Contractor agrees to comply with the rules and regulations of Section 503 of the Rehabilitation Act of 1973 as interpreted in 41 CFR Part 60-741.29.
 5. in the event of Contractor's noncompliance with the requirements of this clause contract may be terminated or suspended in whole or in part.
 6. This clause shall be included in all subcontracts. In the event that this contract exceeds \$10,000 but is less than \$500,000 and provides for performance in 90 days or more, Contractor further agrees as follows:
 7. Contractor agrees (1) to establish an affirmative action program, appropriate procedures consistent with the guidelines and the rules of the Secretary of Labor, will provide the affirmative action regarding employment and advancement of the handicapped required by P.L. 93-516, (2) to publish the program in the employees or personnel handbook or otherwise distribute a copy to all personnel, (3) to review the program each year and to make such changes as may be appropriate, and (4) to designate one of the principal officials to be responsible for the establishment and operation of the program.
 8. Contractor agrees to permit the examination by appropriate contracting agency officials or the Assistant Secretary for Employment Standards or the designee, of pertinent books, documents, papers and records concerning employment and advancement of the handicapped.
 9. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Assistant Secretary for Employment Standards, provided by the contracting officer, stating Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment and the rights and remedies available.

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10. Contractor will notify each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract understanding, that he/she is bound by the terms of Section 503 of the Rehabilitation Act, and is committed to take affirmative action to employ and advance in employment, physically and mentally handicapped individuals.
In the event this contract exceeds \$100,000 and provides for performance in 90 days or more, Contractor further agrees as follows:
11. Contractor agrees to submit a copy of his/her affirmative action program to the State Equal Opportunity Office within 30 days after the award of a contract or sub-contract.
12. Contractor agrees to submit a summary report to the State of Rhode Island and Providence Plantations Equal Opportunity Office by March 31 of each year during performance of the contract and by March 31 of the year following completion of the contract, in the form prescribed by State Equal Opportunity Office covering employment and complaint experience accommodations made and all steps taken to effectuate and carry out the commitments set forth in the affirmative action program.

XXII. CERTIFICATE OF NON-SEGREGATED FACILITIES

Contractor certifies that he/she does not maintain or provide for his/her Employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any such location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "Segregated Facilities" means any waiting room, work areas, rest rooms, and wash rooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods), he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000, which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will forward the following notice to proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

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XXIII. NOTICE OF PROSPECTIVE SUBCONTRACTORS
OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED
FACILITIES

A Certificate of Nonsegregated Facilities must be submitted prior to the award of a sub-contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each sub-contract or for all subcontracts during a period (i.e. quarterly, semi-annually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 USA 1001.

A. Affirmative Action Compliance Program

Contractor agrees to develop a written Affirmative Action Compliance Program for each of its establishments as required by Section 60-1.40 of Title 41 of the Code of Federal Regulations.

B. Employer's Information Report (EE)-1 Form 100

Contractor agrees to file in duplicate, Standard Form 100, entitled, "Equal Employment Opportunity Employer Information Report EEO-1" as required by Section 60-1.7 of Title 41 of the Code of Federal Regulations.

Send original copy to Federal authorities, duplicate copy to the State Equal Opportunity Office, 1 Capitol Hill, Providence, Rhode Island 02908-5865.

C. Notice to All Vendors

If it should be determined by the State Equal Opportunity Office that any company doing business with the State is guilty of non-compliance with the provisions of this document, said company will be given two (2) written warnings. If the said company does not comply immediately after the second written notice, then the State Equal Opportunity Office will notify the Rhode Island Public Transit Authority, who shall have the authority to have the contract **revoked** and all contractual obligations of the State dealing with the contract in question will be **null and void**.

D. Post Award Conference

Post Award Conference for the Implementation of Affirmative Action prior to Signing of Contract.

C. Signature Required

Failure to provide a signature prior to Award to successful Bidder shall be cause for Rejection of Bid.

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XXIV. GENERAL CONTRACT COMPLIANCE CERTIFICATE
& AGREEMENT FORM

(Equal Employment Opportunity)

Authorized Signature: _____

Print Name: _____

Title: _____

Company Name: _____

Date: _____

Indicate Job Location Address: _____

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XXV. CERTIFICATION OF PRIMARY PARTICIPANT FORM

Request for Bid Number: 13-01
Project Solar Roofing Project

The primary participant _____, certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared eligible, or voluntarily excluded from covered transactions by any Federal Department or Agency;
- 2) Have not within a three-year period preceding this Bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- 4) Have not within a three-year period preceding this application/Bid had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- 5) The Primary Participant also certifies that, if it later becomes aware of any information contradicting the statements of Paragraphs 1-4 above, it will promptly notify RIPTA.

The primary participant _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C Sections 3801 **ET SEQ.** are applicable thereto.

Signature/Title of Authorized Official

Date

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XXVI. DEBARMENT CERTIFICATION

**CERTIFICATION REQUIREMENTS FOR RECIPIENTS OF GRANTS
AND
COOPERATIVE AGREEMENTS
REGARDING DEBARMENT AND SUSPENSIONS**

The purpose of the attached certifications is to exclude entities and individuals that the Federal Government has either debarred or suspended from obtaining Federal assistance funds through grants, cooperative agreements or third party contracts.

To assure that such entities and individuals are not involved in projects financed with Federal Transit Administration (FTA) assistance, FTA requires its applicants to complete the certificates.

The primary participant must sign the "**Certification of Primary Participant**" and, if there is a subcontractor, they must sign the "**Certification of a Subcontractor**" (If there is more than one subcontractor, they must all sign one of these forms.).

XXVII. CERTIFICATION OF A SUBCONTRACTOR FORM

Request for Bid Number: 13-01

Project Solar Roofing Project

The potential Subcontractor, _____
Certifies, by submission of this certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or agency.

The Subcontractor, _____ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 **ET SEQ.** are applicable thereto.

Signature/Title of Authorized Official

Print Signature

Date

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XXVIII. NON-RESIDENT CONTRACTOR INFORMATION

From: Department of Administration
Division of Taxation
289 Promenade Street
Providence, RI 02908

Notice: "To All Persons Engaging Non-Resident Contractors"
Regulation Re: Contractors and Subcontractors - "Regulation C"
Article III, Non-Resident Contractors

Any individual, partnership, joint venture, corporation, state, municipal government or exempt organization awarding a construction contract in Rhode Island to a non-resident contractor (as hereinafter defined) is required, pursuant to Section 44-1-6 of the General Laws, as last amended, to withhold 3% of the contract price to secure payment of any sales and use tax or income tax withheld, or both, that may be due to the State of Rhode Island in carrying out the contract.

Upon completion of the contract, the non-resident contractor is required to notify the Tax Administration shall, within 30 days after receipt of the request, audit the records and provide by certified mail to the person holding the funds and to the non-resident contractor, either a certificate of no tax due or a notice of taxes due.

The person holding the funds is required to pay to the Tax Administrator the amount set forth in the notice of taxed due, including interest and penalties, but not in excess of 3% of the contract price. Monies withheld in excess of taxes due the Tax Administrator may be paid to the non-resident contractor.

If the Tax Administrator does not furnish a certificate of no tax due or a notice of taxes due within 30 days after receipt of the request for the making of the audit, the person holding the funds may remit the full amount due to the non-resident contractor. The Tax Administrator shall not have any claim against such funds in the hand of the person holding the funds.

DEFINITION OF NON-RESIDENT CONTRACTOR

"A non-resident contractor is one who does not maintain a regular place of business in this state. A regular place of business shall be deemed to mean and include any bona fide office (other than a statutory office), factory, warehouse or other space in this state at which the taxpayer is doing business in its own name in a regular and systematic manner and which is continuously maintained, occupied and used by the taxpayer in carrying on its business through its regular employees regularly in attendance. A temporary office at the site of construction shall not constitute a regular place of business".

In order to effectively implement this legislative change which became effective on passage, non-resident contractors shall forward such notice of completion by certified or registered mail (in duplicate) to the Division of Taxation.

R. Gary Clark
Tax Administrator

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XXIX. DRUG & ALCOHOL TESTING PROGRAM

In accordance with the Federal Transit Administration Rules 49 CFR 40, 653, and 654, pertaining to prohibited drug use and Contract Service Providers who perform safety-sensitive functions as follows:

- Operation of Revenue Service Vehicles In and Out of Service.
- Dispatch or Control Movement of Revenue Service Vehicles.
- Maintain, Repair and Inspect Revenue Service Vehicle.

The standards they must meet are:

1. Provide each employee performing a RIPTA safety-sensitive function a copy of RIPTA's Prohibited Drug Use and Alcohol Misuse Policy and Procedures. Each Employee must sign and return to RIPTA "Confirmation of Receipt" form.
2. Provide RIPTA with documentation that all employees, both full and part-time, participate in a prohibited drug use testing program in compliance with 49 CFR 653 and an alcohol misuse testing program in compliance with 49 CFR 654. Documentation must be provided which insures that all testing is performed in compliance with 49 CFR 40.
3. Provide to RIPTA's, by February 1st, following each calendar year, annual Management Information Systems (MIS) reports for submission to the FTA. The MIS form used must be that which is contained in 49 CFR 653 and 654.
4. Identify a contact person responsible for handling all 49 CFR 40, 653 and 654 regulation compliance.

XXX. DRUG AND ALCOHOL POLICY ACKNOWLEDGEMENT

CONTRACT SERVICE PROVIDER ACKNOWLEDGEMENT AND CONFIRMATION OF RECEIPT

Employee Name: _____

Company Name: _____

I have received a copy of Rhode Island Public Transit Authority's Prohibited Drug Use and Alcohol Misuse Policy and Procedures.

Employee

Signature: _____

Date: _____

Return To: Drug and Alcohol Test Coordinator
Department of Human Resources
Rhode Island Public Transit Authority
Room 217
705 Elmwood Avenue
Providence, Rhode Island 02907

This Project Funded by

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or in part by the American Recovery and Reinvestment Act of 2009, Public Law No 11105

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A. Definitions

1. "ARRA" or "Recovery Act" means the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat.115.
2. "ARRA Funds" means any funds that are expended or obligated from appropriations made under ARRA.
3. "ARRA Requirements" means these Supplemental Terms and Conditions, as well as any terms and conditions required by: ARRA; federal law, regulation, policy or guidance; the federal Office of Management and Budget (OMB); the awarding federal agency; or, the Rhode Island Office of Economic Recovery and Reinvestment (OERR).
4. "Authority" means the Rhode Island Public Transit Authority.
5. "Contract" means the contract to which these Supplemental Terms and Conditions are attached, and includes an agreement made pursuant to a grant or loan subaward to a Sub-Recipient.
6. "Contractor" means the party or parties to the Contract other than the Prime Recipient and includes a subgrantee or a borrower. For the purposes of ARRA reporting, Contractor is either a Sub-Recipient or a Recipient Vendor under this Contract.
7. "Prime Recipient" means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.
8. "Recipient Vendor" means a Vendor that receives ARRA Funds from a Prime Recipient.
9. "Subcontractor" means any entity engaged by Contractor to provide goods or perform services in connection with this contract.
10. "Sub-Recipient Vendor" means a Vendor that receives ARRA Funds from a Sub-Recipient.
11. "Sub-Recipient" means a non-Federal entity receiving ARRA Funds through a Prime Recipient to carry out an ARRA funded program or project, but does not include an individual that is a beneficiary of such a program. The term " Sub-Recipient" is intended to be consistent with the definition in OMB Circular A-133 and section 2.2 of the June 22, 2009 OMB Reporting Guidance.¹ A Sub-Recipient is sometimes referred to as a subgrantee.
12. "Supplemental Terms and Conditions" means these Supplemental Terms And Conditions For Contracts And Subawards Funded In Whole Or In Part By The American Reinvestment Recovery Act Of 2009, Pub. L. No. 111-5, as may be subsequently revised pursuant to ongoing guidance from the relevant federal or Authority authorities.
13. "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the project or program funded by ARRA. The term "Vendor" is intended to be consistent with the definition in OMB Circular A-133 and section 2.2 of the June 22, 2009 OMB Reporting Guidance.

B. General

1. To the extent this Contract involves the use of ARRA Funds, Contractor shall comply with both the ARRA Requirements and these Supplemental Terms and Conditions, except where such compliance is exempted or prohibited by law.
2. The Contractor acknowledges these Supplemental Terms and Conditions may

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require changes due to future revisions of or additions to the ARRA Requirements, and agrees that any revisions of or additions to the ARRA Requirements shall automatically become a part of the Supplemental Terms and Conditions without the necessity of either party executing or issuing any further instrument and shall become a part of Contractor's obligations under the Contract.. The Authority may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

C. Conflicting Terms

Contractor agrees that, to the extent that any term or condition herein conflicts with one or more ARRA Requirements, the ARRA Requirements shall control.

D. Enforceability

Contractor agrees that if it or one of its subcontractors or sub-recipients fails to comply with all applicable federal and Authority requirements governing the use of ARRA funds, including any one of the terms and conditions specified herein, the Authority may withhold or suspend, in whole or in part, funds awarded under the program, recover misspent funds, or both. This provision is in addition to all other civil and criminal remedies available to the Authority under applicable Authority and federal laws and regulations. Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009, M-09-21 (June 22, 2009), available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf.

E. Applicability to Subcontracts and Subawards

Contractor agrees that it shall include the Supplemental Terms and Conditions set forth herein, including this provision, in all subcontracts or subawards made in connection with projects funded in whole or in part by ARRA, and also agrees that it will not include provisions in any such subcontracts or subawards that conflict with either ARRA or the terms and conditions herein.

F. Availability of Funding

Contractor understands that federal funds made available by ARRA are temporary in nature and agrees that the Authority is under no obligation to provide additional Authority-financed appropriations once the temporary federal funds are expended.

G. Inspection and Audit of Records

Contractor agrees that it shall permit the Authority and its representatives, the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to:

1. Examine, inspect, copy, review or audit any records relevant to, and/or involve transactions relating to, this agreement, including documents and electronically stored information in its or any of its subcontractors' or sub-recipients' possession, custody or control unless subject to a valid claim of privilege or otherwise legally protected from disclosure; and
2. Interview any officer or employee of the Contractor regarding the activities and programs funded by ARRA.

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H. Registration Requirements

- 1. DUNS Number Registration.** Contractor agrees: (i) if it does not have a Dun and Bradstreet Data Universal Numbering System (DUNS) Number, to register for a DUNS Number within 10 business days of receiving this Contract; (ii) to provide the Authority with its DUNS number prior to accepting funds under this agreement; and (iii) to inform the Authority of any material changes concerning its DUNS number.

- 2. Central Contractor Registration.** To the extent that Contractor is a Sub-Recipient, it agrees: (i) to maintain a current registration in the Central Contractor Registration (CCR) at all times this agreement is in force, (ii) to provide the Authority with documentation sufficient to demonstrate that it has a current CCR registration, and (iii) to inform the Authority of any material changes concerning this registration.

- 3. FederalReporting.gov Registration.** To the extent that Contractor is a Sub-Recipient, it agrees: (i) to register on FederalReporting.gov within 10 business days of receiving this subaward; (ii) to maintain a current registration on FederalReporting.gov at all times this agreement is in force; (iii) to provide the Authority with documentation sufficient to demonstrate that it has a current registration on FederalReporting.gov, and (iv) to inform the Authority of any material changes concerning this registration.

I. Reporting Requirements under § 1512 of ARRA

1. Contractor agrees to provide the Authority with data sufficient to fulfill the Authority's ARRA reporting requirements within the timeframes established by Authority or federal law, regulation or policy, including but not limited to section 1512 reporting requirements.

2. To the extent that Contractor is a Sub-Recipient with a Subaward having a total value of greater than \$25,000, it agrees to report directly to the Federal government the information described in section 1512(c) of ARRA using the reporting instructions and data elements available online at FederalReporting.gov, and ensure that any information that is prefilled is corrected or updated as needed. Information from these reports will be made available to the public.

3. To the extent that Contractor is a Sub-Recipient with a Subaward having a total value of greater than \$25,000, it accepts delegation of reporting responsibility of FFATA data elements required under section 1512 of ARRA for payments from the Authority. Sub-Recipient shall utilize the federal government's online reporting solution at www.FederalReporting.gov. Reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by ARRA.

4. To the extent that Contractor is a Sub-Recipient with a Subaward having an initial total value of less than \$25,000, but is subsequently modified to exceed \$25,000, Contractor agrees that subsections (b) and (c) above apply after the modification.

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J. Buy American Requirements under § 1605 of ARRA

1. Contractor agrees that, in accordance with section 1605 of ARRA, it will not use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. In addition to the foregoing Contractor agrees to abide by all regulations issued pursuant to section 1605 of ARRA.
2. Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in section 1605 of ARRA and federal regulations issued pursuant thereto.

K. Wage Rate Requirements under § 1606 of ARRA

1. Contractor agrees that it will comply with the wage rate requirements contained in section 1606 of ARRA, which requires that, notwithstanding any other provision of law, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United Authoritys Code. The Secretary of Labor's determination regarding the prevailing wages applicable in Rhode Island is available at <http://www.gpo.gov/davisbacon/ri.html>.
2. Contractor agrees that it will comply with all federal regulations issued pursuant to section 1606 of ARRA, and that it will require any subcontractors or sub-recipients to comply with the above provision.

L. Required Jobs Data Reporting under § 1512(c)(3)(D) of ARRA

1. Contractor agrees, in accordance with section 1512(c)(3)(D) of ARRA and section 5 of the June 22, 2009 OMB Reporting Guidance (entitled "Reporting on Jobs Creation Estimates and by Recipients"), to provide an estimate of the number of jobs created and the number of jobs retained by ARRA-funded projects and activities. In order to perform the calculation, the Contractor will provide the data elements listed in sub-section (2) below.
2. Contractor agrees that, no later than two business days after the end of each calendar quarter, it will provide to the Authority the following data elements using a form specified by the Authority:
 - a. The total number of ARRA-funded hours worked on this award.
 - b. The number of hours in a full-time schedule for a quarter.
 - c. A narrative description of the employment impact of the ARRA funded work. This narrative is cumulative for each calendar quarter and at a minimum, shall address the impact on the Contractor's workforce and the impact on the workforces of its subcontractors or sub-recipients.
3. Contractor agrees that, in the event that the federal government permits direct

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reporting of section 1512(c)(3)(D) jobs data by sub-recipients or vendors, it will directly report jobs data to the federal government, consistent with any applicable federal law, regulations and guidance.

M. Segregation of Funds

1. Contractor agrees that it shall segregate obligations and expenditures of ARRA funds from other funding it receives from the Authority and other sources, including other Federal awards or grants.
2. Contractor agrees that no part of funds made available under ARRA may be commingled with any other funds or used for a purpose other than that of making payments in support of projects and activities expressly authorized by ARRA.

N. Disclosure pursuant to the False Claims Act

Contractor agrees that it shall promptly refer to an appropriate Federal Inspector General any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

O. Disclosure of Fraud, Waste and Mismanagement to Authority Authorities

Contractor shall also refer promptly to the Rhode Island Public Transit Authority Department of Purchases, any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has committed a criminal or civil violation of Authority or Federal laws and regulations in connection with funds appropriated under ARRA.

P. Prohibited Uses of ARRA Funds

1. Contractor agrees that neither it nor any subcontractors or sub-recipients will use the funds made available under this agreement for any casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools, or similar projects.
2. Contractor agrees that neither it nor any subcontractors or sub-recipients will use the funds made available under this agreement in a manner inconsistent with any certification made by the Governor or any other Authority official pursuant to the certification requirements of ARRA, which are published online at <http://www.recovery.ri.gov/certification/>.

Q. Whistleblower Protection under §1553 of ARRA

1. Contractor agrees that it shall not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosures by the employee of information that he or she reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to covered funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds; (4) an abuse of authority related to the implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

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2. Contractor agrees to post notice of the rights and remedies available to employees under section 1553 of ARRA.

Please note that the Authority will strictly enforce compliance with all ARRA Requirements and these Supplemental Terms and Conditions. Accordingly, all Contractors should familiarize themselves with these Supplemental Terms and Conditions as well as all ARRA Requirements as they relate to this Contract.

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XXXII. MANDATORY MONTHLY REPORTING REQUIREMENTS

A. Introduction

This project is funded under the American Recovery and Reinvestment Act of 2009 (ARRA). Therefore, the successful bidder contractor/ consultant/ vendor, hereafter referred to as the Contractor, is required to report to RIPTA specific information about the jobs created and/or maintained during the project.

The Contractor shall submit a monthly report of the below information to RIPTA for each calendar month from the date of the Notice to Proceed until completion/termination of the contract. The Contractor is responsible for maintaining data to support its report and make it available to RIPTA upon request. The Contractor will report any additional information required by RIPTA under ARRA upon request.

The month of report is the immediately preceding calendar month. **The Contractor shall report the below information to RIPTA within five (5) business days after the end of the month of report.** The Contractor will not be paid until the below information is reported to RIPTA in a timely manner.

The Contractor will report the below information **directly** to the following RIPTA representative:

William Rush, Director of Finance
Rhode Island Public Transit Authority
Room 207
705 Elmwood Avenue
Providence, Rhode Island 02907
401-784-9500 ext 222 (phone)
401-784-9533 (fax)
wrush@ripta.com (email)

The Contractor shall report the below information for its own workforce as well as the workforce of all its subcontractors that worked on the project during the month of report.

B. Jobs Defined

Jobs includes:

- The Contractor's own project labor, including permanent, temporary, and contract project staff working on the job site.
- Employees who work off the job site, in the project office, in the home office, from a home (teleworker), or other office location directly in support of project/contract.
- Direct labor associated with the project such as design, construction, and inspection performed by but not limited to consultants, surveyors, engineers, inspectors, sampling and testing technicians, and lab technicians working for the Contractor directly in support of project.

Jobs does not include:

- General overhead personnel and work hours.

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- Suppliers and manufacturers of materials such as steel, culverts, guardrails, and tools and vehicles.
- Estimated indirect labor, such as material testing, material production or estimated macro-economic impacts.

C. Report Format

The Contractor may use the following *ARRA CONTRACTOR MONTHLY REPORT FORM* as model for submitting the below information to RIPTA. The use of the model form is optional and at the discretion of the Contractor.

XXXIII. REQUIRED REPORT INFORMATION

The Contractor shall report information on the direct, on-the-project jobs for its workforce and the workforce of its subcontractors working on the project during the month of report.

The Contractor's report must include the following fourteen (14) items of information:

1. RIPTA Purchase Order Number.
2. Month and Year of Report.
3. Name of Contractor.
4. Contractor's DUNS Number.
(a DUNS Number can be acquired online at http://www.dnb.com/US/duns_update/)
5. The number of employees of the Contractor working directly on the project during the month of report. Do not include general overhead personnel. Do not include materials suppliers and manufacturers.
6. The total number hours worked (not paid) for the employees of the Contractor working directly on the project during the month of report. Do not report overtime hours any differently than other hours of work. One hour of overtime is counted as one hour of work.
7. The total dollar amount of wages earned (not paid to) by the employees of the Contractor working directly on the project during the month of report. Include only wages (base plus overtime pay) and do not include overhead (vacation pay, holiday pay, benefits, etc.) or indirect costs.
8. The name of each and every subcontractor the Contractor working directly on the project during the month of report.
9. The number of employees of each and every subcontractor to the Contractor working directly on the project during the month of report. Do not include general overhead personnel. Do not include materials suppliers and manufacturers.
10. The total number of hours worked (not paid) by the employees of the subcontractor to the Contractor working directly on the project during the month of report. Do not report overtime hours any differently than other hours of work. One hour of overtime is counted as one hour of work.
11. The total dollar amount of wages earned (not paid to) by the employees of the subcontractor to the Contractor working directly on the project during the month of report. Include only wages (base plus overtime pay) and do not include overhead (vacation pay, holiday pay, benefits, etc.) or indirect costs.
12. Name of the person responsible for preparation of the report for the Contractor.

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13. Signature of the person responsible for preparation of the report for the Contractor. By signing the report, the person certifies that he/she is knowledgeable of the hours worked and employment status for all the employees.
14. The date that the Contractor completed and signed the report.

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ARRA CONTRACTOR MONTHLY REPORT FORM

(Refer to *Mandatory Monthly Reporting Requirements* for instructions on completing form)

1. RIPTA Purchase Order Number:		Year of Report:		
3. Contractor Name:		DUNS #:		
Contractor Employees:	6. Total Number Hours Worked by Contractor Employees:	7. Total Wages Earned by Contractor Employees:		
8. Subcontractor(s) (SUB) Name(s)		9. Number of Employees	10. Total Number of SUBs Worked	B Wages Earned

Please submit report directly to: William Rush, Director of Finance
 Rhode Island Public Transit Authority
 Room 207, 705 Elmwood Avenue
 Providence, Rhode Island 02907
 401-784-9500 ext 222(phone)
 401-784-9533 (fax)
wrush@ripta.com (email))

RHODE ISLAND PUBLIC TRANSIT AUTHORITY
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Technical Specifications

XXXIV. PROJECT DESCRIPTION

The Project consists of the alteration of RIPTA's Transportation Building at 269 Melrose St., Providence, RI as indicated on the Drawings and/or in the Specifications, and includes but is not limited to a complete re-roof and a new solar photovoltaic system.

- A. Demolition includes but is not limited to removal of existing roof membrane, flashings, wet insulation, existing metal roofing, fascias, copings, skylight domes, and prep for new drains and TDD units.
- B. Interior work is limited to alterations required for installation of new TDD units, and connection of Alternate method of solar power delivery if selected.
- C. Roofing work includes but is not limited to a new 30-year warranted TPO fully-adhered system with high reflectivity over new coverboard, new tapered insulation on the upper roof, new metal parapet edges, metal roofing, fascias, and misc. flashings. Accessories include boot flashings, walkway pads, and snowguards. Substrate prep includes new plywood up CMU parapets and under metal roofing. Skylight domes are either being replaced in kind or with TDD units. The roof ladder is being prepped and painted and the existing roof hatch will be replaced and upgraded. Ancillary carpentry, sealant work, and painting will be required. Roof installer must be a licensed applicator for system proposed and have 5 years or more of experience.
- D. Sitework includes but is not limited to concrete pads, bollards, trenching, duct work, conduit, pavement patching, fencing, gates, and support structures for the solar inverter systems.
- E. Solar work includes but is not limited to a Base Bid system of 794 panels on ballasted rack systems with two inverters and all necessary system components to generate 184KW as a power producer. There are alternates to expand the system up to 281KW. Solar installer must demonstrate successful installation of (5) systems within New England worth more than \$100,000. (2) years of system maintenance is included in the Base Bid with an alternate to extend this to (5) years total.
- F. Plumbing: Alter existing system and add new construction, keeping existing in operation. Additional roof drains are being added to the system.
- G. HVAC: Alter existing system and add new construction, keeping existing in operation. Units will need to be disconnected, lifted, and reinstalled in many instances.
- H. Electrical Power and Lighting: Alter existing system and add new construction, keeping existing in operation. Tie into transformer in Base Bid or building system under Alternate.
- I. Fire Alarm: Alter existing system as needed for new work and add new construction, keeping existing in operation. Protect during work and arrange for any outages required with local officials.
- J. Either a General Contractor, Roofing Contractor or Solar contractor may be prime.
- K. No deposits will be paid - materials may only be invoiced upon delivery.
- L. Project is partially funded by an ARRA grant and requires both prevailing wage labor for all work and Buy America provisions for project

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Technical Specifications

- M. Contract Type; A single prime contract based on a Stipulated Price Agreement - a modified A107-2007 will be required. A copy is provided as part of the Bidding information. No changes to this contract will be allowed.

XXXV.DRAWINGS AND SPECIFICATIONS

Bidders can obtain copies of the Drawings and Specifications for this project at the following location

ServicePoint
303 Eddy Street
Providence, RI 02903
401-278-4000

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BID FORM

XXXVIII. ALTERNATES

We propose to modify the above Bid Sum by the following amounts as identified by numbered Alternatives specified in Section 01230 of the Specifications, and as may be selected by the Owner:

Add Alternate No. 1 – Maximized Solar Installation

Add: _____ (\$_____)

Add Alternate No. 2 – Upgrades at Roofing

Add: _____ (\$_____)

Add Alternate No. 3 – Solar Connection Option

Add: _____ (\$_____)

Add Alternate No. 4 – Additional 3 years of Maintenance

Add: _____ (\$_____)

XXXIX. UNIT PRICES

Per Section 01270, provide unit prices/SF or each as noted for the following items:

A. Replace Insulation - _____ (\$_____/BF)

B. Replace Rotted Wood Blocking - _____ (\$_____/BF)

C. Replace Curb - _____ (\$_____/each)

D. Add Solar String - _____ (\$_____/each)

E. Add String Box - _____ (\$_____/each)

F. Delete Solar String- _____ (\$_____/each)

G. Delete String Box - _____ (\$_____/each)

H. Labor Unit Prices – See additional sheet included as an attachment to this Bid listing all trade labor rates per Section 01270 requirements.

XL. ACCEPTANCE

This offer shall be open to acceptance and is irrevocable for 120 days from the bid closing date. If this bid is accepted by the Owner within the time period stated above, we will:

- Execute and proceed under the Agreement, subject to compliance with required State regulatory agency approvals as described in the Bid Documents.

RHODE ISLAND PUBLIC TRANSIT AUTHORITY
Invitation for Bids Number 13-01
BID FORM

- Furnish the required bonds in compliance with amended provisions of the Instructions to Bidders.
- Commence work within seven days after receipt of a Notice to Proceed.

If this bid is accepted within the time stated, and we fail to commence the Work, or we fail to provide the required Bonds, the security deposit shall be forfeited to the Owner by reason of our failure, limited in amount to the lesser of the face value of the security deposit or the difference between this bid and the bid upon which a Contract is signed.

In the event our bid is not accepted within the time stated above, the required security deposit shall be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders; unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

XLII. CONTRACT TIME

If this Bid is accepted, we will achieve Substantial Completion of the Work within 120 calendar days after the issue date of the Notice to Proceed.

XLII. LIQUIDATED DAMAGES

Time is of the Essence: If we fail to achieve certification of Substantial Completion at the expiration of the agreed upon Contract Time indicated above, we acknowledge that we will be assessed Liquidated Damages for each calendar day the project continues to be in default of Substantial Completion, as follows:

\$ 1,000 per calendar day.

XLIII. REQUIREMENT FOR LICENSE NUMBER

In compliance with the requirements of Rhode Island General Law, Section 5-65-23, my Rhode Island license number for the work to be performed by this firm as prime contractor is:

LICENSE NUMBER: _____ .

XLIV. ADDENDA

The following Addenda have been received. The modifications to the Bid Documents noted below have been considered and all costs are included in the Bid Sum.

Addendum No. 1, dated _____ .

XLV. BID FORM SIGNATURE(S)

(Bidder's name)

By: _____

Title: _____

Corporate Seal: **END OF DOCUMENT**

RHODE ISLAND PUBLIC TRANSIT AUTHORITY
Invitation for Bids Number 13-01
APPENDIX 1

APPENDIX ONE: A107-2007: STANDARD FORM OF CONTRACT

 **AIA[®] Document A107[™] – 2007****Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope**

| **AGREEMENT** made as of the day of in the year 2012
(In words, indicate day, month and year.)

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

Rhode Island Transit Authority
705 Elmwood Avenue
Providence, RI 02907
Tel. (401) 784-9500
Fax No. (401) 784-9595

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

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

Roof Repair and Solar Energy Installation
Rhode Island Public Transit Authority
269 Melrose Street, Providence, RI

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

Brewster Thornton Group Architects, LLP
150 Chestnut Street
Providence, RI 02903
Tel. (401) 861-1600
Fax No. (401) 861-5588

| The Owner and Contractor agree as follows:

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

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

Init.

TABLE OF ARTICLES

- 1 THE WORK OF THIS CONTRACT
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENT
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- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES
- 22 ADDITIONAL PROVISIONS REGARDING GRANT FUNDING

(Paragraphs deleted)

ARTICLE 1 THE WORK, PERSONNEL and COOPERATION WITH OTHERS

§ 1.1 Independent Contractor Relationship Contractor's relationship with Owner is that of independent contractor, and nothing contained in this Agreement shall make either party a partner, agent, employee, joint venturer, dealer or franchisee of the other party. Contractor is retained by Owner only for the purposes and to the extent set forth in this Agreement. Neither Contractor nor Owner may bind the other whatsoever, and the Work to be provided by Contractor shall not be construed to be part of a continuing relationship between Contractor and Owner. Contractor agrees to pay any and all salary or other benefits to its employees and shall make all appropriate tax (including unemployment tax), social security, Medicare and other withholding deductions and payments.

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§ 1.2 Work to be Performed. The Contractor shall fully execute the work described in the Contract Documents, including any and all work reasonably inferable from the Contract Documents as necessary to produce the intended results (the "Work"), except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 1.3 Contractor Personnel

§ 1.3.1 The Contractor will maintain at the Project Site a competent full-time project superintendent plus any other personnel necessary for effective and timely performance of the work to coordinate and provide general direction of the Work.

§ 1.3.2 The Contractor shall notify the Owner of the identity and qualifications of its superintendent, project manager, project executive and all other persons with significant involvement in the project (the "Project Team"), and shall provide a job organization chart at least 30 days prior to the Date of Commencement, and Contractor shall replace any person listed thereon to whom the Owner, for good cause, objects.

§ 1.3.3 The Contractor acknowledges that, in entering into this Agreement, the Owner is relying upon the fact that each of the members of the Project Team will continue to perform his or her services throughout the entirety of the performance of the Work. No change will be made in the membership of the Project Team without the Owner's prior written approval, which approval shall not be withheld on an arbitrary basis; the Owner may require the replacement of any member of the Project Team for reasonable cause specified in writing, upon notice to the Contractor.

§ 1.4 All labor employed by the Contractor to perform Work on the Site shall cooperate with all other separate contractors, subcontractors, and suppliers performing work on the Site, no matter by whom employed, in furtherance of the Owner's interests.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner. If the Notice to Proceed is a Partial Notice to Proceed, it shall define the particular work to be commenced, the limitations upon the work to be done, and shall state the maximum amount (including allocable portion of the Contractor's Fee) which the Contractor shall be entitled to be paid for such work. The Owner shall not be obligated to pay for any work done or to pay any amount in excess of the limitation stated in a partial Notice to Proceed.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

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

§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than one hundred twenty (120) calendar days from the date of the written Notice to Proceed issued by the Owner or Architect.

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

§ 2.4 Liquidated Damages for Delay. In the event Contractor fails to achieve substantial completion within the time allotted for performance of the work, Owner may assess liquidated damages against the Contractor in the amount of

Init.

One Thousand Dollars per day until substantial completion is achieved, and Owner may offset any such amounts against any amounts otherwise due to Contractor for its work under this Agreement. Owner and Contractor acknowledge and agree that Owner will be damaged by any failure to timely reach substantial completion, but also acknowledge that it would be impracticable or extremely difficult to fix the actual damages resulting therefrom and therefore agree that the liquidated damages established hereunder are therefore a fair and reasonable measure of such damages and are not a penalty.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

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

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

§ 3.2 The Stipulated Sum shall be _____ (\$ _____), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

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

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 3.2.3 Allowances included in the stipulated sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Allowance
------	-----------

(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)

ARTICLE 4 PAYMENTS

§ 4.1 PROGRESS PAYMENTS

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

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Contractor shall, not less than five (5) business days prior to the end of each month, submit to the Owner and the Architect, a Pencil Application for Payment which projects work to be completed and paid for through the end of the month for review by Owner and Architect and the parties shall meet by the end of the month to review jointly. By the fifth day of the next month, the Contractor shall submit an Application for Payment.

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than 60 days following the date the Application for Payment is approved. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for Payment.

§ 4.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 4.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 4.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10 %);
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment.

§ 4.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with the terms of this Agreement.

§ 4.1.8 Reduction or limitation of retainage, if any, shall be as follows:

Provided that no outstanding claims, disputes, liens, delays or defective work require continued withholding of full retainage, the architect may, upon directions of the owner in the owner's sole discretion, reduce the retainage requirement hereunder as follows: (a) following certification by the architect that the project is at least 50% complete, to 5% of each remaining progress payment; (b) following certification by the architect that the project is at least 75% complete, to 2.5% of each remaining progress payment.

§ 4.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 4.1.10 With each Application for Payment, the Contractor shall submit partial releases of lien and acknowledgments of payment executed by Contractor and by each subcontractor and supplier in a form reasonably acceptable to Owner. Each Application for Payment will also include a monthly status report of the progress of the Work. Such monthly status report shall be current through the date of the preceding Application for Payment. In no event shall the monthly status report with respect to an Application for Payment be submitted to the Owner later than the fifth (5th) day of the month next following the month to which such Application for Payment relates. The parties hereby agree that such report is of significant importance to the Owner in determining whether the Contractor is entitled to payment pursuant to such Application for Payment, and failure to deliver such report in its entirety on the date it is due shall be deemed to be just cause for withholding payment. The Owner's waiver of the requirement of such report (or any portion thereof) in respect of any Application for Payment shall not be deemed to be a waiver of the Owner's right to require the full status report in respect of any future Application for Payment. This report will include, in addition to the other documentation expressly required elsewhere in the Contract Documents, the following: a narrative description of the work performed; a progress bar chart indicating the precedence of the remaining portions of the Work; progress photographs; a report of all substantive matters (i.e. pending changes); the number and amount of any Change Orders and a list of key action items which must be addressed by the Owner during the next following thirty (30) day period; a budget comparing: (i) the percentage complete accomplished to date and the balance to be billed per the Schedule of Values, and (ii) the actual time expended in the performance of the Work and the expected dated of completion of the Work; and, any other reports requested by the Owner. All reports shall be in forms reasonably satisfactory to the Owner.

§ 4.1.11 **Payment for Stored Materials.** Upon written request from the Contractor, supported by delivery invoices and by any inspection deemed necessary by Owner or Architect, Owner may allow payment for such materials, supplies and equipment as may be delivered to an approved site in acceptable condition, provided that such materials, supplies or equipment, are identified, insured, set aside and suitably stored at or near the site of the work.

§ 4.2 FINAL PAYMENT

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a guaranteed maximum price; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 60 days after the issuance of the Architect's final Certificate for Payment.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1

(Paragraphs deleted)

DISPUTE RESOLUTION Dispute resolution shall be in accordance with the provisions of Article 21 of this Agreement.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

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

§ 6.1.1 The Agreement is this executed AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 6.1.2

(Paragraphs deleted)

Intentionally Omitted

§ 6.1.3 The Specifications:

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

As listed in Document 00010, the Table of Contents to the Project Specifications dated July 2, 2012.

Section	Title	Date	Pages
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§ 6.1.4 The Drawings:

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

As listed in Document 00015, the List of Drawings dated July 2, 2012.

§ 6.1.5 The Addenda, if any:

Number	Date	Pages
--------	------	-------

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

§ 6.1.6 Additional documents, if any, forming part of the Contract

(Paragraphs deleted)

Documents, are listed on Exhibit __ hereto.:

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 THE CONTRACT DOCUMENTS

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

§ 7.1.1 In the event of conflicts or discrepancies among the Contract Documents, the Documents shall be interpreted on the basis of the follow priorities: First, Modification to the Agreement, those of later date having precedence over those of earlier date; Second, this Agreement; Third, Addenda to Specifications or Drawings, with later date having greater priority; Fourth, Specifications and Drawings. Fifth, the Invitation to Bid.

§ 7.1.2 Larger scale drawings shall take precedence over smaller scale drawings. Should Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quality of the Work unless otherwise directed by written addendum to the Contract. All indications or notations which apply to one of the number of similar situations, material or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 7.1.3 Where codes, standards, requirements and publications of public and private parties are referred to in the Contract Documents, references shall be understood to be to the latest revision prior to the date bids are received or negotiations are concluded, except otherwise indicated.

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§ 7.1.4 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated.

§ 7.1.5 Where the Work is to fit with existing conditions or Work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or Work, unless otherwise specified.

§ 7.1.6 Exact locations of fixtures and outlets shall be obtained from the Architect before the Work is roughed in. Work installed without such information from the Architect shall be relocated at the Contractor's expense.

§ 7.1.7 Existing conditions, plans and information included with the Contract Documents or otherwise made available to the Contractor was obtained by the Owner for use by the Architect in the design of the Project or Work. The Owner does not hold out such information to the Contractor as an accurate or approximate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be except allowed as provided in Section 13.4.

§ 7.1.8 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 7.1.9 Certain drawings (including mechanical, electrical and fire protection drawings) are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the Work of other trades, and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the components of the mechanical, electrical, and fire protection and other allied systems and demonstrating to the Architect's satisfaction that the installation of such systems will comply with the preceding sentence. The Contractor shall be solely liable and responsible for any such costs and/or delays resulting from the Contractor's failure to coordinate such installations.

§ 7.2 THE CONTRACT

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

§ 7.3 THE WORK

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

§ 7.4 INSTRUMENTS OF SERVICE

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

§ 7.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

§ 7.6 TRANSMISSION OF DATA IN DIGITAL FORM If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmission, unless otherwise provided in the Agreement or in the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 8.1.1 The Owner shall endeavor to furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site.

§ 8.1.2 The Owner does not hold out such information to the Contractor as accurate, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed except as may be provided in this Agreement.

§ 8.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall, with the Contractor's cooperation when requested, secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Contractor shall assist Owner in Owner's efforts to obtain necessary permits.

§ 8.2 OWNER'S RIGHT TO STOP THE WORK

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

§ 8.2.2 STOP WORK ORDER FOR OWNER CONVENIENCE. The Contracting Manager may, at any time, by written order to the Contractor, require the Contractor to stop all, or part of the work called for by this Contract. Any such order shall be specifically identified as a STOP WORK ORDER issued pursuant to this article. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage, but shall be entitled to recover all such costs directly caused by such work stoppage and which are adequately documented to the satisfaction of the Owner.

§ 8.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor.

§ 8.4 EXTENT OF OWNER APPROVAL OR CONSENT

Owner is relying on the Architect to exercise the appropriate standard of care in connection with the design of the Work and the Contractor for execution of the Work, including all construction means, methods and techniques. Notwithstanding anything else set forth in the Contract Documents, any "approval" or "consent" by Owner in the context of the design of the Work means only approval of programmatic and/or aesthetic design intent. In the context of execution of the Work, "approval" by Owner of schedules and/or work plans means that the Owner acknowledges such activities or events for purposes of timing or coordination only.

§ 8.5 OWNER-FURNISHED MATERIALS, EQUIPMENT OR FIXTURES

If the Contract Documents require that, as part of the Work, that Contractor shall install or incorporate into the completed construction materials, equipment or fixtures furnished by Owner, Contractor's obligations under this agreement extend to such materials, equipment and fixtures on the same basis as the rest of the Work. Contractor's obligations to correct defective or non-conforming Work extends to and includes any and all materials, equipment, and fixtures furnished by Owner and to the installation thereof by the Contractor and the Subcontractors as fully as if such products had been purchased directly by Contractor or a Subcontractor for incorporation into the Work. The Contractor acknowledges that it has received and approved all information and specifications for any such Owner-furnished products sufficient so as to permit the Contractor to make this agreement. Such specifications for Owner-furnished materials, equipment or fixtures shall be considered a part of the Contract Documents and such items, upon delivery to, and acceptance by, Contractor, shall become a part of the Work.

ARTICLE 9 CONTRACTOR

§ 9.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. Before starting the Work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Contract Documents with each other and with the information furnished by the Owner pursuant to section 2.2 and shall at once report to the Architect any error, inconsistency or omission the Contractor may discover. Any necessary change shall be ordered as provided in Article 7, subject to the requirements of section 1.2 and other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to the Architect, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor should have discovered such, the Contract shall bear all costs arising therefrom.

§ 9.1.2.1 The Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify all measurements at the building site, and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of differences between the actual measurements and the dimensions indicated on the Drawings, except to the extent such differences are attributable to errors and omissions in the Contract Documents prepared by the Architect of which the Contractor is not aware (unless the Contractor should have been aware of such errors and omissions in connection with its exercise of the standard of care exercised by a reasonable contractor experienced in the type of work required) and for which correction would constitute a material change in the Work. All differences which may be found shall be reported in writing to the Architect for consideration before proceeding with the Work. The Contractor shall give the Architect timely notice of any additional Drawings, Specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work.

§ 9.1.3 The Contractor shall not proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but shall request additional Drawings or instructions from the Architect. If the Contractor proceeds with such Work without obtaining further Drawings, Specifications, or instructions, the Contractor shall correct Work performed incorrectly at the Contractor's own cost and expense.

§ 9.2 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

§ 9.2.3 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, as a result of improper coordination or supervision, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.

§ 9.2.4 The Contractor shall arrange for and attend job meetings with the Owner and the Architect and such other persons as the Architect or Owner may from time to time wish to have present. The Contractor shall be represented at all times at such meetings by its superintendent plus any other personnel necessary to make binding decisions and agreements on behalf of the Contractor. An authorized representative of any Subcontractor or lower tier subcontractor shall attend such meetings if the representative's presence is required by the Owner or the Architect. Such representatives of the Contractor and the Subcontractors shall be empowered to making binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

§ 9.2.5 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not arbitrarily be withheld or delayed. The Contractor shall remove the superintendent if requested to do so in writing by the Owner, and shall promptly replace him with a competent person reasonably acceptable to the Owner.

§ 9.2.6 The superintendent shall keep a daily log of the progress of the Work and make it available to the Owner at all times. A copy of the log shall be submitted to the Owner upon completion of the Project. Additionally, daily field reports recording work activities, labor force and other information as required by the Owner shall be prepared daily by the Contractor and each subcontractor and submitted to the Owner.

§ 9.2.7 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.

§ 9.2.8 The Contractor's superintendent shall not be assigned to, or become involved in, any project other than that of this Contract without express written consent of Owner, as sole discretion of owner. He/she shall remain in attendance at the site, and, except for illness or other reason excusable to the Owner, shall be present at all times when Work of any kind is being done, including Work done during overtime. If absent for illness or other reason excusable to the Owner, a replacement having full authority and responsibility of the full-time superintendent shall be provided.

§ 9.3 LABOR AND MATERIALS

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

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Owner reserves the right to require the Contractor to conduct background checks of any and all persons employed or controlled by the Contractor or any or its subcontractors or subconsultants, at any time, for any reason. If so request, the Contractor shall complete the requested background check to the Owner's satisfaction within a reasonable time period prescribed by the Owner. The Owner reserves the right to require the Contractor to remove and/or replace any person based on information it obtains as a result of background checks.

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

§ 9.3.4 All manufactured materials shall be ordered to be delivered in the manufacturer's original, unbroken packages, containers or bundles, bearing the name of the manufacturer and brand name of other designation, and all materials shall be handled, stored, installed, cleaned and protected in accordance with the manufacturer's directions, unless otherwise indicated in the Contract Documents.

§ 9.3.5 Any product, material or equipment specified in the Contract Documents by reference to the number, symbol or title of a specified standard, such as a commercial standard, federal specification, trade association standard, or other similar or related construction industry standard, shall comply with requirements in the latest revision thereof as of the date the Owner and the Contractor execute the Agreement.

§ 9.3.6 In all cases in which a manufacturer's name, trade name or other property designation is used in the Contract Documents in connection with a material, equipment or product to be furnished thereunder, the Contractor shall furnish the material, equipment or product of the named manufacturer(s) unless a written request for substitution is made in accordance with Section 9.3.3 and the substitution is approved in writing by the Owner.

§ 9.3.7 The Contractor and all Subcontractors shall make all provisions necessary to avoid any disputes with labor unions and shall be responsible for any delays, damages or extra costs incurred as a result of such disputes. The Contractor shall be responsible for the maintenance of harmonious labor relations among its employees and the employees of its Subcontractors in such manner as will provide for harmony as far as practical among workers at the Project site. Prior to contracting with any Subcontractor, the Contractor will require such Subcontractor to certify its willingness to cooperate with not only the other Subcontractors hired by the Contractor, but also with the Owner, Architect, any other contractors hired by the Owner, and their subcontractors. Any Subcontractor not cooperating shall, at the Owner's reasonable discretion, be dismissed by the Contractor and a qualified replacement subcontractor shall be hired at the Contractor's expense.

§ 9.4 WARRANTY

§ 9.4.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

§ 9.4.2 The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Architect may require the Contractor to produce reasonable evidence that materials used meet such requirements, such as certified reports or past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Architect, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense.

§ 9.4.3 The warranty provided in this Section 9.4 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise provided by law.

§ 9.4.4 The Contractor hereby assigns to the Owner, effective at the time of Substantial Completion of the Work, any and all manufacturer's warranties required by the Contract Documents relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve all such manufacturer's warranties.

§ 9.4.5 The Contractor shall procure and deliver to the Architect, prior to final payment, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

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§ 9.5 TAXES

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

§ 9.6 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall apply for required licenses, permits, inspections and/or approvals sufficiently in advance of the time required to allow the Contractor and/or the Architect to respond to any municipal comments, conditions or requests (including, without limitation, changes to the Work) without delaying the progress of the Work.

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

§ 9.7 ALLOWANCES

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall not include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, and profit.

§ 9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

§ 9.8.3 In the event the Owner determines that (i) the performance of the Work has not progressed or reached the level of completion required by the Schedule, and (ii) the Contractor fails to submit a Corrective Plan that is approved by the Owner or the progress of the Work is not brought back into compliance with the Schedule on the date proposed by an approved Corrective Plan, the Owner shall have the right to order the Contractor to take corrective measures to expedite the progress of the work, including, without limitation, (1) supplying additional shifts or overtime, (2) supplying the additional manpower, equipment, and facilities, (3) re-sequencing of Work, and (4) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section. The Owner may exercise the rights furnished the Owner under or pursuant to this section as frequently as reasonably necessary to ensure that the Contractor's performance of the work complies with the Schedule.

§ 9.9 SUBMITTALS

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

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information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

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

§ 9.9.3 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction (the "As-built Documents"), and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. The markups to the As-Built Documents shall consist of record information including: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on the Drawings; (iv) the actual installed position of equipment, piping conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (v) such other information as the Owner may reasonably request. Upon completion of the Work, the Contractor shall deliver to the Owner or the Architect the marked As-Built Documents and reproducible transparencies thereof. Approval by the Architect and the Owner of As-Built Documents prepared by the Contractor and its Subcontractors and suppliers shall be a condition precedent to the Owner's obligation to make final payment to the Contractor. The Contractor shall also deliver to the Architect all operations manuals for equipment.

§ 9.10 USE OF SITE

The right of possession of the premises and the improvements thereon shall remain at all times in the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Owner shall not be liable to the Contractor, Subcontractors, their employees or anyone else with respect to the condition of the premises. The Owner shall have the right to refuse admittance to the site to any agent or employee of the Contractor or Subcontractors whose presence the Owner deems hostile to the Owner's interest.

§ 9.11 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. Existing work that is cut, damaged, disturbed or otherwise interfered with by the Contractor, a Subcontractor, or anyone for whom they are responsible shall be fully, properly and carefully repaired by the responsible Contractor or Subcontractor. All such repairs shall be completed in a first-class manner to the satisfaction of the Architect, and shall match similar existing adjoining work.

§ 9.12 CLEANING UP

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

§ 9.13 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

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§ 9.14 ACCESS TO WORK

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

§ 9.15 INDEMNIFICATION

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall defend (with counsel reasonably satisfactory to Owner), indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, caused in whole or in part by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1. In the event of a claim against an indemnitee which exceeds available insurance, or for which Contractor cannot confirm that coverage exists without defenses, Owner shall have the right, but not the obligation, to assume such defense directly and to deduct the costs of that defense from the amount due to the contractor for the Work. These indemnity obligations are hereby agreed to be a part of the performance of the Contract, and any failure to provide adequate indemnity and defense shall entitle the Owner to compensation under Contractor's performance bond.

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

§ 9.16 LIENS

§ 9.16.1 In the event that any Subcontractor, supplier or any other party for whom the Contractor is responsible establishes a lien against the Work and/or the Project site, the Contractor shall, within five days of receipt of notice from the Owner regarding such lien, cause the lien to be discharged (either by obtaining and recording a lien discharge bond from a surety and in a form acceptable to the Owner or otherwise) at no cost to the Owner, except to the extent that the lien is directly and solely attributable to a failure by the Owner to pay undisputed amounts to the Contractor as and when due under the Contract Documents. If the Contractor fails to cause the lien to be discharged within such five day period, the Owner shall have the right to withhold an amount equal to 200% of the lien amount from all further payments to the Contractor until the lien is discharged. The Owner may either (a) apply amount so withheld to discharging such lien or (b) retain such amounts until such lien is discharged or released by the Contractor or the lienor, and shall thereafter credit to the Contractor any amounts remaining after payment of the fees and expenses the Owner incurs in connection with such lien. The Contractor agrees to indemnify and hold harmless the Owner from all costs and expenses incurred by the Owner in connection with such liens. For purposes of this Section 9.16.1, the term "lien" shall mean any instrument filed with the applicable land title records which creates or perfects a lien under any lien law.

§ 9.17 PROTECTION OF EXISTING FACILITY AND OWNER VEHICLES AND EQUIPMENT

§ 9.17.1 In performing the Work, the Contractor shall exercise diligent efforts to protect the existing owner facility and all vehicles and equipment located at the site from any and all damage or hazard which may arise in connection with the Work. In addition to (and not in limitation of) the indemnification obligations of Contractor set forth above, Contractor shall defend, indemnify and hold Owner harmless to the fullest extent permitted by law from all Claims arising out of or resulting from the failure of Contractor (or any subcontractor of any tier) to comply with the provisions of this Section 9.17.1. The foregoing indemnification shall include, without limitation, any Claim attributable to (i) bodily injury, sickness, disease or death arising out of or relating to, and (ii) the costs of any abatement, clean-up, removal and disposal (to the satisfaction of Owner) of, any mold, fungal growth, spores or the like which occurs at the Project site as a result of any failure by Contractor (or any subcontractor of any tier) to comply with the provisions of this Section 9.17.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided

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in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

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

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

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

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

§ 10.6 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

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

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

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor or with one of its subcontractors or suppliers of any tier to perform a portion of the Work.

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

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

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Article 21.

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

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

§ 12.4 Notwithstanding anything to the contrary, the Owner shall have the right to install fixed and loose furniture, furnishings, fixtures, data communications lines, equipment and other items during the Contractor's performance of the Work or portion(s) thereof. The Owner and the Contractor shall cooperate in scheduling and coordinating any such activities by or on behalf of the Owner. Any such installation or activities by or on behalf of the Owner shall not be deemed as acceptance of any part of any Work not completed in accordance with the Contract Documents.

ARTICLE 13 CHANGES IN THE WORK

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

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

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

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

§ 13.5 Unless otherwise agreed to by the Owner, the aggregate amount of profit and overhead that the Contractor, each Subcontractor and all lower lien subcontractors and suppliers can charge for Work performed pursuant to Change Orders and Construction Change Directives shall not exceed the total of the following: (a) for the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost of the Work; (b) for the Contractor for Work performed by Subcontractors, five percent (5%) of the cost of such Work; (c) for each Subcontractor for Work performed by such Subcontractor's own forces, ten percent (10%) of the cost of such Work for overhead and for profit; and (d) for each Subcontractor for Work performed by lower tier subcontractors, five percent (5%) of the cost of such Work for overhead and for profit. This aggregate combined profit and overhead amount shall include all other markups and non-direct costs. Notwithstanding the foregoing, nothing in this provision shall restrict the manner in which this aggregate amount is distributed between the Contractor and the various subcontractors and suppliers.

§ 13.6 Unless expressly directed in writing by the Owner or Architect, Contractor shall be entitled to no additional compensation, costs or damages under the terms of this Contract, and hereby waives the right to any such additional compensation, costs or damages, whether arising from acts, omissions, discoveries or events which it claims have caused increased its costs, unless Contractor provides detailed written notice in advance of incurring such costs and otherwise complies with all applicable terms and provisions of this Contract pertaining to submission of claims, changes, modifications, and damages.

§ 13.7 BACK-UP FOR CHANGE ORDERS

§ 13.7.1 Lump Sum Proposal: The Contractor, Subcontractor or lower tier subcontractor's proposal covering the extra Work or change will be itemized for the various components or Work and segregated by labor, material and equipment in a detailed format satisfactory to the Owner. Such format will include a material and labor quantity take-off and related pricing information and extensions (by drawing, if applicable). The Contractor will furnish his itemized lump sum proposal and the similarly detailed proposals of any Subcontractors, lower tier subcontractors or material suppliers.

§ 13.7.2 Time and Material: Should the Owner elect to have the extra Work or change performed on a time and material basis, and so notify the Contractor in writing, the Contractor, Subcontractor or lower tier subcontractor shall perform the Work in such manner. Records supporting the actual cost of the Work performed must be kept and forwarded to the Owner's representative. Such records include, but are not limited to, material tickets for all actual material used, daily time sheets itemizing workmen's names and hours worked for all actual labor costs, and such other evidence as the Owner's representative may reasonably request. Owner may require authentication of all time sheets and material tickets. If so requested, the failure to provide such authentication may constitute a waiver of any rights to payment of the Contractor, Subcontractor or any lower tier subcontractor for the extra Work or change performed.

§ 13.7.3 Unit Prices: The Contractor, Subcontractor or lower tier subcontractor's proposal shall itemize the quantities of each item of Work for which there is an applicable unit price. The quantities must be itemized in relation to each specific Contract Drawing.

§ 13.8 ACTUAL COST OF THE WORK

§ 13.8.1 If performed on a time and material basis, the Actual Cost of the Work for a Subcontractor shall comprise the following elements:

§ 13.8.1.1 Direct Job Costs for Labor: The number of hours, hourly payroll cost, labor burden (as defined in section 13.7.1.2) and extended totals for each item of Work to arrive at the cost for direct jobsite labor including working foremen. All other administration, clerical expense and supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) shall be considered covered by the Subcontractor's mark-up.

§ 13.8.1.2 Labor Burden: The employer's net actual cost of payroll taxes (FICA, SUTA, FUTA), net actual cost of union benefits, and net actual cost for workers' compensation insurance, taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, etc. Labor burden shall not be considered to include costs of Commercial General Liability Insurance, auto insurance or umbrella insurance which shall be considered covered by the Subcontractor's mark-up.

§ 13.8.1.3 Direct Job Costs for Materials & Equipment: The quantity, price and extended totals for each item of Work to arrive at the costs of direct material and equipment. Appropriate amounts may be included for the rental of major equipment (defined as tools and equipment with individual purchase costs of more than \$1,000) specifically needed to perform the extra Work or change. Use of small tools (defined as tools and equipment with individual purchase costs of less than \$1,000) is considered covered by the mark-up percentage to be added to the direct cost of the extra work or change. Cost, for construction equipment, shall be the lower of the total expected rental cost or ownership cost equivalent including transportation charges and all applicable taxes.

§ 13.8.2 If performed on a unit price basis, the Actual Cost of Work shall comprise the following elements:

§ 13.8.2.1 Unit prices are for Work complete, measured in place (i.e., actual quantity installed) and cover profit and all other costs and expenses of the Contractor, Subcontractor or lower tier subcontractor. Unit prices include, without limit, all conditions of the Contract and all general requirements such as layout, reproduction of Drawings and Specifications, testing and inspection, shop drawing and sample coordination, supervision (field and home office), small tools and expendable items, insurance, taxes, temporary facilities and services, including access and safety provisions, "as-built" drawings, and general and administrative overhead and profit.

§ 13.8.2.2 Unit Price Application: For unit price items, additions and deletions of like items shall be algebraically summed and then multiplied by the applicable unit prices.

§ 13.8.2.3 Any changes undertaken without the Owner's authorization will not be recognized as a basis for a Claim for extra cost at a later date. If the Contractor claims that any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and such instructions or orders are not accompanied by a written acknowledgement by the Owner or the Architect that extra payment will be made or time extended, it shall promptly so notify the Architect in writing and should not proceed with the Work until it has received a further written order to proceed, except in cases of emergency affecting life or property. No claim for extra cost or time on account of such instructions shall be valid unless the Contractor has so notified the Architect, before proceeding, that it claims extra cost and time and has received the further written order from the Owner's representative to proceed.

§ 13.9 Unless expressly reserved therein, an executed Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs, delays, interferences, disruptions and cumulative impacts associated with such change.

ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.4.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes not directed at Contractor or any Subcontractor, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Article 21. The Contractor acknowledges and agrees that (a) no adjustments to the Contract Time shall be made unless the events described above shall have the effect of actually delaying completion of components of the Work on the critical path indicated in the Schedule and (b) adjustments to the Contract Time will be permitted in connection with any such delay only to the extent such delay (i) is not caused, or could not have been avoided, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (iii) has no concurrent or contributing cause for which the Contractor would not be entitled to an extension of the Contract Time. Notwithstanding anything to the contrary, the Contractor shall not be entitled to any extension in the

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Contract Time for delays in receiving required licenses, permits, inspections or approvals unless the Owner is required to provide or obtain such licenses, permits, inspections or approvals.

§ 14.6 Contractor's written Claim for extension of Contract Time shall be accompanied by detailed dates, correspondence, notices, and any other data which provides proof of the events which are the basis for the Claim, including a network analysis justifying the time extension. Said network analysis shall specifically detail the extension of the critical path of the Project caused by the events which underlie the time extension request.

§ 14.7 Should the Contractor be delayed in the performance of the Work, the Contractor shall (a) notify the Owner and the Architect in writing within three (3) days following the event or occurrence causing such delay and (b) notify the Owner and the Architect of the estimated extent of the delay and the cost, if any, which may be incurred as result of the delay within twenty-one (21) days following the event or occurrence causing such delay. If the Contractor fails to so notify the Owner and the Architect, the Contractor shall be barred from asserting any claim for compensation, expense or damages with respect to such delay.

§ 14.8 No claim for delay shall be allowed on account of failure of the Architect to furnish Drawings, Specifications or instructions, or to return Shop Drawings or Samples until a reasonable period of time (but in any event not less than fifteen days or such longer period as may be agreed to among the Architect, the Contractor and the Owner) after receipt by the Architect of written demand for such instructions, Drawings, or Samples, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work.

§ 14.9 Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of weather conditions unless (1) the weather during any calendar month (or pro rata portions of partial months at the beginning and end of the Contract Time) is "abnormal," as defined below; (2) the Contractor demonstrates that such abnormal weather had the effect of delaying completion of components of Work on the critical path indicated in the Construction Schedule; and (3) such Claim is made by written notice. "Abnormal weather" shall, for purposes of this subparagraph, be limited to circumstances in which adverse weather conditions significantly exceed those which have historically been encountered, or may reasonably be expected to be encountered, at the Project site.

§ 14.10 If any of events described in this Paragraph 14.5 above entitle the Contractor to an extension of the Contract Time, the sole remedy of the Contractor shall be such extension of the Contract Time and the Contractor shall not be entitled to any adjustment of the Contract Sum, except as otherwise provided in the following sentence. If and to the extent that the Contract Time is extended solely on account of fault or neglect of the Owner or Architect, the Contract Sum shall be increased by the Contractor's reasonable and verified additional direct out of pocket costs of performing the Work, but only to the extent directly and solely attributable to the fault or neglect of the Owner or Architect.

§ 14.11 The Owner and Contractor agree that it is the intent of the Contract Documents that the Contractor shall have responsibility to achieve Substantial Completion of the Work within the Contract Time with an adequate work force, irrespective of any labor dispute (other than those of general applicability not directed at the Project, the Contractor or anyone for whom the Contractor is responsible), including picketing at or near the Project site, whether or not the Contractor is the primary employer involved in the labor dispute or a neutral employer, and whether or not the Contractor has a collective bargaining relationship with the union(s) involved in the labor dispute. Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of a labor dispute (other than those of general applicability not directed at the Project, the Contractor or anyone for whom the contractor is responsible).

§ 14.12 FORCE MAJEURE

Neither Party shall be liable to the other Party for failure of or delay in performance of any obligation under this Agreement, directly or indirectly, owing to war, acts of terrorism, acts of God, embargoes, riots, strike and other events beyond its reasonable control, the effect of which, by the exercise of reasonable diligence, the non performing party could not avoid. In the event that such failure or delay occurs, the affected Party shall notify the other Party of the occurrence thereof as soon as possible and the Parties shall discuss the best way to resolve the event of force majeure. Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the non performing party could have, with the

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exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non performing party shall within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement. "

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 APPLICATIONS FOR PAYMENT

§ 15.1.1 The Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used in reviewing the Contractor's Applications for Payment.

§ 15.1.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; (iii) proof of compliance with insurance and surety provisions as outlined in this Agreement; (iv) an updated Schedule that accurately reflects the current status of the Project; and (v) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.

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

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

§ 15.2 CERTIFICATES FOR PAYMENT

§ 15.2.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.2.3.

§ 15.2.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques,

sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.2.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.2.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.2.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor including subcontractor and/or supplier lien claims which have not been dissolved by bond by operation of law by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure to maintain current record drawings

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

§ 15.3 PROGRESS PAYMENTS

§ 15.3.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.

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

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

§ 15.4 SUBSTANTIAL COMPLETION

§ 15.4.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and only minor items which can be corrected or completed without any material interference with the Owner's use of the Work which remains to be corrected or completed. Further, the following items are required from the Contractor prior to the Owner's issuing of the Certificate of Substantial Completion: (i) the Owner and Architect agree that the Project is ready for the use intended without any concurrent Work that will disrupt the Owner's activities; (ii) the Owner and the Architect agree that the Work has been completed in accordance with the Contract Documents, specifications, plans, drawings and all Change Orders; (iii) all HVAC systems included in the Work are functioning in accordance with the Contract Documents and a satisfactory test and balance report for said systems has been received by the Architect; (iv) all life safety systems included in the Work are functioning in accordance with the Contract Documents; (v) receipt by the Architect of the list of all outstanding Work that shall become the Punch List; and (vi) receipt by the Owner of all required final certifications and/or approvals from the governmental authorities having jurisdiction over the Work.

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

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

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

§ 15.5 FINAL COMPLETION AND FINAL PAYMENT

§ 15.5.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.5.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) waivers of liens, in the form provided by the Owner, from the Contractor and all Subcontractors and suppliers who performed portions of the Work or supplied materials or equipment in connection with the Work, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (7) to the extent that final certificate(s) of occupancy for the Project and the certificates of inspection and operating permits are required by governmental authorities to use and occupy the Project as intended, and to the extent that such items were not delivered to the Owner as a condition to Substantial completion of the Work, the final certificate(s) of occupancy for the Project and the certificates of inspection and operating permits, (8) the As-Built Documents and reproducible transparencies thereof (9) all special warranties required by the Contract Documents, endorsed by the Contractor and in a form reasonably acceptable to the Architect and the Owner, and (10) all manufacturers' catalogs, instructions, and other similar data, including the necessary graphic cuts, diagrams, value charts, and the like, covering all mechanical and manually operated devices furnished and/or installed in any permanent structure. All of the foregoing items shall be submitted to the Owner in a single binder (the "Project Binder"), and the Contractor shall submit to the Owner four (4) copies of the Project Binder. As an additional condition to be satisfied prior to final payment, the Contractor's personnel or Subcontractors' or suppliers' personnel, as appropriate, shall provide the property management and operations personnel at the Property with training in the operation and maintenance of building systems and controls installed as part of the Work. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond

satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 15.5.3

(Paragraphs deleted)

In the event that the Contractor fails to timely complete any item of punchlist work to the satisfaction of the Owner or Architect, the Owner may choose, in its sole discretion, to make Final Payment but to withhold from that final payment an amount up to Two Hundred and Fifty Percent of the cost estimated by the Architect as necessary to complete that work, and to release Contractor from the obligation to perform that work.

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

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 SAFETY PRECAUTIONS AND PROGRAMS

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

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

The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits, including all storage areas, shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.

§ 16.3 The Contractor is responsible for maintaining the area within the site limits free of all debris and food-related trash that may harbor and/or attract rodents. The Contractor shall provide secure refuse containers for all food-related trash. The containers shall be heavy-duty refuse containers with tight-fitting domed lids, with a spring loaded flap, and no opening that allow access by rodents. The Contractor shall notify the Owner immediately whenever rodents or signs of rodents (e.g., burrows, droppings) are observed.

§ 16.4 The Contractor shall at all times protect excavations, trenches, buildings and materials, from rain water, ground water, backup or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

§ 16.5 The Contractor shall take reasonable precautions to prevent loss or damage caused by vandalism, theft, burglary, pilferage or unexplained disappearance of property of the Owner, whether or not forming part of the Work, located within those areas of the Project to which the Contractor has control.

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§ 16.2 HAZARDOUS MATERIALS

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

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

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

§ 16.2.4 Hazardous waste that is generated by the Contractor as part of the Work shall be stored and disposed of in accordance with all applicable Federal, State and local regulations. Hazardous waste storage requirements include, but are not limited to, secondary containment, proper labeling, segregation of incompatible materials and routing inspection of storage areas. In addition, all hazardous waste containers shall be constructed of a material that is compatible with the waste, shall be in sound condition, and shall be kept securely closed at all times.

§ 16.2.5 The Contractor is responsible for the proper removal and disposition of all surplus chemicals (e.g., paints, lubricants, cleaning products) that they bring on-site as part of the Work. The Contractor shall not use any drain, pipe or plumbing fixture for the disposal of any waste materials. No chemicals that the Contractor brings on-site shall remain on the Project site at the completion of the Work.

§ 16.2.6 To ensure that construction activities and the use of heavy equipment does not increase the risk of release of oil or hazardous materials to the environment, the Contractor shall have and implement a Spill Plan that reflects all regulatory standards. The Contractor shall immediately report all spills/releases to the Owner. The Contractor shall coordinate with the Owner regarding reporting and follow-up documentation to outside regulatory agencies.

§ 16.2.7 The Contractor shall be responsible for familiarizing itself with the regulatory requirements governing the disposal of material, including material containing pollutants, from the site. The Owner will not recognize claims for additional disposal costs that could reasonably have been anticipated at the time of bidding.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 The Contractor shall purchase from, and maintain in a company or companies acceptable to the Owner and lawfully authorized to do business in the jurisdiction in which the Project is located, insurance for protection from claims which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The Contractor shall maintain the insurance coverages set out in this Section, insuring the Contractor and its employees, agents, and designees, which insurance shall be by policies that are subject to the Owner's approval:

- a. Workers' Compensation Insurance to cover full liability under the Workers' Compensation laws of the state or jurisdiction in which the Project is located at the statutory limits required in said jurisdiction, including coverage for the benefits provided under United States Longshoremen's & Harbor Workers' Act, if applicable.
- b. Employers' Liability Insurance (with limits of not less than \$500,000 per accident for Bodily Injury by accident, \$500,000 each employee - by disease and \$500,000 policy limit - by disease), covering operations of the Contractor.
- c. Commercial General Liability ("CGL") Insurance for operations of the Contractor with coverage written at least as broad as that of the standard Commercial General Liability Insurance policy (Occurrence Form) including hazards of operations (including explosions, collapse, and underground operations), with contractual liability coverage and personal injury liability coverage for claims arising out of this Agreement. The insurance required by this subsection (c) shall be written for not less than limits of liability as follows: \$1,000,000 each occurrence for bodily injury and property damage; \$2,000,000 general aggregate; and \$2,000,000 aggregate products/completed operations. CGL coverage shall be written on ISO Occurrence Form CG 00 01 (10 01) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products, completed operations, and personal and advertising injury.
- d. Automobile Liability Insurance covering all owned non-owned and hired automobiles, trucks, and trailers of the Contractor. Such insurance coverage shall be written at least as broad as that of the Standard Commercial Automobile Liability policy and shall be written for not less than a \$1,000,000 limit of liability per occurrence for bodily injury and property damage.
- e. Should aircraft or watercraft of any kind be used by Contractor, any tier of Subcontractor or by anyone else on their behalf, Contractor or Subcontractor shall maintain or cause the operator of the aircraft/watercraft to maintain Aircraft/Watercraft Public Liability Insurance including bodily injury, property damage, and passenger liability, with respect to any aircraft/watercraft owner, used, operated or hired in connection with the Work the Contractor, Subcontractor or anyone else written for not less than a \$5,000,000 limit of liability per occurrence for bodily injury and property damage.
- f. Should the performance of this Agreement require the Contractor, any tier of subcontractor or anyone else on their behalf to conduct any activities in the vicinity of a railroad, the Contractor or Subcontractor shall maintain such Railroad Protective Insurance as may be required by the affected railroad written for not less than the limits required by such railroad. The Contractor's Railroad Protective Insurance shall be written on the policy form required by the affected railroad.
- g. Excess or Umbrella Liability Insurance with coverage written at least as broad as those of the primary policies required by this Subsectionsl (b), (c), (d) and (e) above and written for not less than a \$10,000,000 limit of liability per occurrence

§ 17.1.2 Each insurance policy to be maintained under the prior Section, subparts l (b), (c), (d), (e), (f), and (g), shall be endorsed to name as Additional Insureds: the Owner, Owner's Representative, Architect and the trustees, directors, officers, agents, consultants, servants and employees of each of them and all other interests as may be reasonably required by the Owner. Such parties shall be included as Additional Insureds on the CGL and Umbrella using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 20 33 (10 01) AND CG 20 37 (10 01) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured. Such insurance shall apply as primary and non-contributing insurance before any other insurance or self insurance, including any deductible, maintained by, or provided to, the Additional Insured. If the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis and apply to the Additional Insureds only. The amount of Contractor's insurance shall not be reduced by the existence of such other insurance. All Subcontractors shall provide endorsements naming the Contractor, the Owner, Owner's Representative, Architect, and any lenders of Owner and all other parties required by this Agreement as "Additional Insureds" on their CGL and Umbrella policies using the same ISO forms or combinations of forms. Contractor and all Subcontractors shall maintain CGL and Umbrella coverage for themselves and all additional insureds for the duration of the Work and maintain Completed Operations coverage for themselves and the Additional Insureds for at least three (3) years after Substantial Completion of the Work.

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§ 17.1.3 Prior to the date on which Contractor commences the performance of the Work, the Contractor shall cause to be furnished to the Owner the Certificate of Insurance for the coverages required by this Agreement to be maintained by Contractor with insurance carriers acceptable to the Owner. As and when the Owner may direct, copies of the actual insurance policies or renewals or replacements thereof shall be submitted to the Owner. All copies of policies, if any, and Certificates of Insurance submitted to the Owner shall be in form and content acceptable to the Owner. In the event Contractor maintains insurance with limits exceeding the limits required hereunder, the Certificate of Insurance shall state the full extent of the coverage available to the above Additional Insureds. Such excess liability coverage will inure to the benefit of the Additional Insureds in the event of loss in excess of the minimum insurance required herein. Contractor will obtain and maintain copies of Certificates of Insurance from all Subcontractors.

§ 17.1.4 Contractor shall require all policies of insurance that are secured and maintained by Contractor to include clauses providing that each carrier shall waive all of its rights of recovery, under subrogation or otherwise, against the Owner, Owner's Representative, Architect and their affiliates. In addition, Contractor waives all rights of recovery against the Owner, Owner's Representative and/or Architect it may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the Work or activities of Contractor. Nothing contained herein shall relieve contractor from its obligations to exercise due care in the performance of its duties in under this Contract. If the Contractor fails to furnish and maintain the required insurance, the Owner may, at its option, purchase such insurance on behalf of the Contractor, and Contractor shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

§ 17.2 OWNER'S LIABILITY INSURANCE

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

§ 17.3 PROPERTY INSURANCE

§ 17.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 15.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

§ 17.3.2 The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 17.3.3 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 12, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section 17.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 12, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

§ 17.3.5 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles unless such loss is due to the fault or neglect of Contractor or a party for whom Contractor is responsible.

§ 17.4 PERFORMANCE BOND AND PAYMENT BOND

§ 17.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract in a form and from a surety reasonably acceptable to the Owner.

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

§ 17.4.3 In addition, should anyone claiming by, through or under Contractor assert a mechanic's lien on the Project alleging non-payment for work, labor and materials or other similar claims regarding the Project, Contractor shall be obligated to obtain a bond pursuant to applicable law, or if acceptable to Owner, other lawful and satisfactory security, to discharge said lien and to clear the title of the Project.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 All work shall be subject to inspection and testing by the Owner. The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.2.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.4.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

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

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

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

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 ASSIGNMENT OF CONTRACT

19.1.1 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

19.1.2 The Contractor shall not transfer the rights and obligations of the Contract to third parties without the prior written approval of the Authority's Contracting Officer. After review of facts and circumstances without exception the assignment shall not be approved unless the surety, in writing, agrees to that assignment and accepts the assignee as the Contractor and principal on the payment and/or performance bonds. If this Contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Authority under this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, any may thereafter be further assigned and reassigned to any institution. (Notice of such assignment shall be made to the Authority.) Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. It is the Authority's intent to recognize only bona fide lending institutions, therefore, assignment to any private corporation, business or individual, which does not qualify as such, is specifically prohibited. Any attempt to transfer by assignment not authorized by this article shall constitute a breach of the Contract and the Authority may for such cause terminate the right of the Contractor to proceed as provided in the DEFAULT article of these General Provisions, and the Contractor and his sureties shall be liable to the Authority for any excess costs incurred by the Authority. The Rhode Island Public Transit Authority may assign some or all of its rights to purchase the items specified in this contract to one or more third parties, provided, however, that any such assignment shall not relieve RIPTA of its obligations under this contract unless otherwise agreed to by Contractor in writing.

§ 19.2 GOVERNING LAW AND COMPLIANCE WITH LAWS

§ 19.2.1 The Contract shall be governed by the law of the place where the Project is located,

§ 19.2.2 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

§ 19.2.3 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

§ 19.2.4 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulation of the United States Department of Labor (41 C.F.R. Part 60), and with any rule, regulation, and guidelines of the State of Rhode Island or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records, and accounts for the purpose of ascertaining compliance with all rules, regulations, and orders, and the covenant, terms, and conditions of this Agreement.

§ 19.3 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor.

§ 19.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements

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of the final dispute resolution method selected in the Agreement within the period specified by applicable law,. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.4.

§ 19.5 SPECIFIC PROJECT REQUIREMENTS

§19.5.1 Project Requirements. In addition to the Contractor's obligations to comply with applicable laws, the Contractor specifically recognizes and agrees that the performance of the Work and the construction of the Project are subject to certain legal restrictions and agreements, as set forth in the agreements listed in Exhibit "___" attached hereto. The Contractor agrees that, in performing the Work, it shall comply with the agreements and restrictions set forth in the agreements listed on Exhibit "___".

§ 19.6 LIMITATION OF OWNER'S LIABILITY

§19.6.1 Limitation of Owner's Liability. No trustee, officer, director, beneficiary, trustee, employee, or other principals, agents, or representatives (whether disclosed or undisclosed) of the Owner shall be personally liable to the Contractor hereunder, for the Owner's payment obligations or otherwise, the Contractor hereby agreeing to look solely to the interest of the Owner in the Project for the satisfaction of any liability of the Owner hereunder.

§ 19.7 OWNER-FURNISHED EQUIPMENT

§19.7.1 Owner-furnished equipment. Owner may furnish equipment for installation by Contractor as part of the Work. To the extent the Contract Sum includes installation by Contractor of Owner-furnished equipment, and to the extent allowed by the manufactures of such equipment, Owner shall transfer all warranties on such equipment to Contractor, who shall assume any remaining warranties, provide installation in accordance with manufactures instructions as needed to maintain and protect such warranties, and facilitate warranty service as otherwise provided in the Contract Documents.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 TERMINATION BY THE CONTRACTOR

If the Architect fails to certify payment as provided in Section 15.2.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages. The Contractor, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the Authority at all reasonable times at the office of the Contractor but without direct charge to the Authority, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or, to the extent approved by the Owner, photographs, micro photographs, or other authentic reproductions thereof.

§ 20.2 TERMINATION BY THE OWNER FOR CAUSE

§ 20.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

§ 20.2.5 In the event that any court or arbitrator determines that the Owner lacked sufficient grounds for any termination for cause, such termination shall be deemed a convenience termination, and shall be subject to the damages limitations set forth in Section 20.3 hereof.

§ 20.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination. Costs claimed, agreed to, or determined pursuant to this paragraph shall be in accordance with the applicable with the applicable contract cost principles and procedures of the Federal Acquisition Regulations (48 CFR 31.1) in effect on the date of this Contract.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.8 and Sections 15.5.3 and 15.5.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

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

§ 21.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.4 Any dispute not resolved by mediation pursuant to Section 21.3 shall be resolved by litigation in Providence County Superior Court or, at the sole discretion of the Owner, by binding arbitration in Providence, Rhode Island administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement, as modified below. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 21.5 In the event that the parties proceed to arbitration, the Owner shall have the right, in its sole discretion, but not the obligation, to join any other parties in such arbitration. In the event that the Owner is unable to achieve such joinder, at Owner's sole discretion the parties' disputes may instead be resolved in court, and the arbitration shall then be dismissed without prejudice in order to allow the same. If such joinder is achieved, the arbitral procedures set forth below may be modified to conform to the requirements of a multi-party proceeding or as may otherwise be ordered by the arbitrator. As between Owner and Contractor, however, the provisions hereof regarding interest and Dispute Costs shall remain in full force and effect regardless of any other changes to the dispute resolution procedures.

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§ 21.6 Discovery in any such arbitration shall consist of (a) production of paper and electronic documents in accordance with the requirements of Rule 34 of the Federal Rules of Civil Procedure, within 30 days following the date of a document request, (b) written statements of claims or defenses, if deemed necessary by the arbitrator, within 10 days following order by the arbitrator and (c) written expert disclosures sufficient to satisfy Rule 26 of the Federal Rules of Civil Procedure within 60 days of the date of the arbitration demand, with rebuttal expert disclosures within 15 days thereafter. In addition, for each \$100,000 in dispute, each side shall be permitted to take up to eight hours of deposition testimony, with such hours of examination divided among one or more witnesses. Notwithstanding the foregoing, these discovery requirements shall be subject to modification for good cause shown within the sound discretion of the arbitrator.

§ 21.7 Any award of damages arising under this contract shall include prejudgment and post-judgment interest from the date of the demand at 6% per annum. The prevailing party in any dispute shall also be awarded all costs incurred in connection with such dispute, consisting of filing fees, reasonable arbitrator and legal fees, expert fees and disbursement (collectively the "Dispute Costs"). For purpose of such award of Dispute Costs, the prevailing party in any dispute shall be a party to whom an affirmative award is made for all or a substantial portion of the recovery sought or the party who successfully defends against all or a substantial portion of the recovery sought by the other party, and if neither party substantially prevails no Dispute Costs shall be awarded and each party shall bear its own costs.

§ 22 ADDITIONAL PROVISIONS REGARDING ARRA FUNDING

§ 22.1 Contractor acknowledges and understands that the project which is the subject of this contract is receiving funding in whole or in part from one or more grants issued by the Federal Transit Administration or under the American Recovery and Reinvestment Act of 2009 ("ARRA"). All requirements of those grants applicable to contractors, subcontractors and suppliers are hereby incorporated by reference into this contract as if fully set forth herein. To the extent that there is any conflict between provisions of this contract and provisions of federal law, federal law shall apply. The Contractor hereby agrees and certifies that it will incorporate all grant requirements applicable to this project into any contracts with its subcontractors and suppliers on this project.

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

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

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