

**SECTION 00 73 13 - SUPPLEMENTAL GENERAL CONDITIONS****GENERAL CONDITIONS**

The "General Conditions of the Contract for Construction," Document A-201, Sixteenth Edition, dated 2007, as issued by the American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006 (the "General Conditions") form the General Conditions for this Contract whether bound herein or not. The term "Contractor" as used herein shall have the same meaning as the term "Construction Manager" as used in the Standard Form of Agreement Between Owner and Construction Manager, AIA Document A-133 CMc, between the parties hereto.

The provisions of the General Conditions shall apply to the work of this Contract, except as modified or supplemented hereinafter in these Supplemental Conditions. Where General Conditions Sections or Subsections are modified in part by these Supplemental Conditions, the portions of the General Conditions, which have not been modified, shall remain in effect. In the event of discrepancy between the General Conditions and these Supplemental Conditions, these Supplemental Conditions shall prevail.

**ARTICLE 1 - GENERAL PROVISIONS**

Section 1.1 Basic Definitions. Add the following clauses to Section 1.1.1:

- .1 In the event of conflict or discrepancies among the Contract Documents, the Contract Documents shall be construed according to the following priorities.
  - a. Highest Priority            Modifications
  - b. Second Priority            Agreement
  - c. Third Priority            Addenda - later date to take precedence
  - d. Fourth Priority            Supplemental General Conditions
  - e. Fifth Priority            General Conditions
  - f. Sixth Priority            Special requirements of financing agency published in the Project Manual
  - g. Seventh Priority            Division 1 of the Specifications
  - h. Eighth Priority            Drawings and Div. 2-16 of the Specifications
- .2 In the event of conflicts or discrepancies between the Drawings and Divisions 2-16 of the Specifications or within either document not clarified

by Addendum, the Architect will determine which takes precedence in accordance with Section 4.2.11.

- 3 The Contract Documents executed by the Owner and Contractor shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.

Section 1.1 Basic Definitions. Add the following to subsection 1.1.2:

Except for the special agreements in Section 3.18, nothing contained in the Contract Documents shall be construed to create any contractual relationship of any kind between the Architect and the Contractor.

## ARTICLE 2 - OWNER

Section 2.3: Delete “repeatedly” in line 2.

## ARTICLE 3 - CONTRACTOR

Section 3.2 Review of Contract Documents and Field Conditions by Contractor:

Add the following to the beginning of Section 3.2.2 after "...before starting each portion of the Work,” in the first line:

“and at frequent intervals during the progress thereof,”.

Add the following Sections:

- 3.2.5 The Contractor shall give the Architect timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail, in order to permit the proper progress of the Work.
- 3.2.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor’s requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.
- 3.2.7 Any necessary changes shall be ordered as provided in Article 7.

Section 3.4 Labor and Materials. Add the following Sections:

- 3.4.4 Upon the signing of the Guaranteed Maximum Price Amendment, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each of the major products to be used in the Work and, where applicable, the name of the installing Subcontractor.

3.4.5 The Architect shall reply in writing within seven (7) days to the Contractor stating whether the Owner or the Architect, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure to object to a manufacturer shall not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must conform to such requirements.

.1 After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the Contract Documents, Section 01 25 00 Substitution Procedures.

.2 By making requests for substitutions based on Subsection 3.4.5.1 above, Contractor:

a. represents that it has personally investigated the proposed substitute products and determined that they are equal or superior in all respects to those specified;

b. represents that it will provide the same warranty for the substitution that it would for the specified product;

c. certifies that the cost data presented is complete and includes all related costs under this Contract but excludes costs under separate contracts, and excludes the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

d. will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed substitutions and to make agreed upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

#### Section 3.7 Permits, Fees, Notices and Compliance with Laws

In Section 3.7.4 change the time required for notice from 21 days to 5 days.

Section 3.9 Superintendent. Add the following clause to the end of Section 3.9.1:

.1 The Contractor shall assign one construction superintendent to the Project and maintain the same person as superintendent throughout the duration of the Contract unless prevented from doing so due to acts beyond the Contractor's control.

Delete the following in the last line of Section 3.9.3:

“which shall not unreasonably be withheld or delayed.”

Add the following Section:

3.9.4 The superintendent or assistant to the superintendent shall also perform as a coordinator for site work and mechanical and electrical work. The coordinator shall be knowledgeable in site issues and mechanical and electrical systems and capable of reading, interpreting and coordinating Drawings, Specifications, and shop drawings pertaining to such systems. The coordinator shall assist the Subcontractors in arranging space conditions to eliminate interference between utilities and other site elements and mechanical and electrical systems and other Work and shall supervise the preparation of coordination drawings documenting the spatial arrangements for such systems within restricted spaces. The coordinator shall assist in planning and expediting the proper sequences of delivery of site related materials and mechanical and electrical equipment to the Project site. The contract documents are the basis for the creation of the coordination drawings. The Architect is responsible for the fundamental coordination of the contract documents upon which all further coordination is based. The Contractor is responsible for submission of coordination drawings, if required, and for final coordination of the Work.

Section 3.12 Shop Drawings, Product Data and Samples. Add the following Section:

3.12.11 The Architect’s review of Contractor’s submittals will be limited to examination of an initial submittal and up to two (2) resubmittals. The Architect’s review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional submittals.

Section 13.18 Indemnification.

Change Section 13.18.2 to read “13.18.3”.

Add the following Section:

13.18.2 The Contractor shall indemnify, defend and hold harmless the Owner from and against all loss, costs, and damages incurred by the Owner as a result of the filing of any mechanic’s liens relating to the Work, except to the extent any such lien relates solely to or arises solely from Owner’s failure to make a timely progress payment under the Agreement.

#### ARTICLE 4 - ARCHITECT

Section 4.2 Administration of the Contract. Add the following clause to Section 4.2.2:

- .1 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

Add the following at the end of Section 4.2.11: “, but in any event within not less than ten business days.”

#### ARTICLE 5 – SUBCONTRACTORS

In the first line of Section 5.3, delete the text up to the comma and replace with the following: “By written agreement”

#### ARTICLE 6 - CONSTRUCTION BY OWNER

No modifications.

#### ARTICLE 7 - CHANGES IN THE WORK

Add the following Sections:

- 7.1.4 In order to facilitate checking for quotations of extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$1,000.00 be approved without such itemization.

In the first line of Section 7.2.1, add “, Owner’s lender (if required)” after “Contractor”.

Add a new Section 7.3.7.6, reading as follows: “For work performed by subcontractors or sub-subcontractors and amount to cover their overhead and profit totaling not more than 10% of the costs outline in .1 through .5 above.”

#### ARTICLE 8 - TIME

Section 8.3 Delays and Extensions of Time: Delete the words “labor disputes” from line three in Section 8.3.1.

Add the following Section 8.3.4:

The Owner shall have the right to establish liquidated damages for failure to achieve Substantial Completion in a timely manner. The amount and schedule for liquidated damages shall be enumerated in the Contract and/or the Guaranteed Maximum Price Amendment.

#### ARTICLE 9 - PAYMENTS AND COMPLETION

Section 9.3 Applications for Payment. Add the following clauses to Section 9.3.1:

- 9.3.1.3 Until the Work is 50 percent complete, the Owner will pay 90 percent of the undisputed amount due the Contractor on account of progress payments. Thereafter, the Owner will pay 100% of the undisputed amount due the Contractor on account of progress payments until Substantial Completion of the Work as defined in the General Conditions and amended herein. All Retainage accrued up to the point of 50% completion will be held by the Owner until Substantial Completion. From the point of 50% completion to Substantial Completion, Project retainage will not be allowed to fall below 5% of the Cost of the Work. The Owner may reinstate retainage at any time in sufficient amount to maintain the 5% level of retainage until Substantial Completion.
- 9.3.1.4 The full Contract retainage in the amount of 10 % may be reinstated at any time by the Owner if the manner of completion of the Work and its progress do not remain satisfactory to the Architect or the Owner, or if the Surety withholds its consent, or for other good and sufficient reasons.
- 9.3.1.5 The Owner shall make Progress Payments and Final Payment within 30 days of application date.

Section 9.5 Decisions to Withhold Certification: Delete “repeated” in Section 9.5.1.7.

Section 9.8 Substantial Completion: Add the following to the end of Section 9.8.1:

“... and only minor items, which can be corrected or completed without substantial interference with the Owner's use of the Work, remain to be corrected or completed, and an unconditional Certificate of Occupancy has been issued by the local code enforcement agency having jurisdiction for the Project location.”

Section 9.10 Final Completion and Final Payment: Insert the following new item (6) in Section 9.10.2:

“and, (6) As-Built Drawings and Owner’s Operating Manuals”

Add the following Section:

#### 9.11 Storage of Materials Off Site

9.11.1 The Contractor, its Subcontractor and Sub-subcontractors shall obtain prior written approval from the Owner for permission to store materials to be incorporated in the Work, for which Progress Payments will be requested, at off-site locations. Any and all charges for storage, including insurance, shall be borne solely by the Contractor. Before approval, Owner will require proper proof of insurance naming the Owner as an additionally insured party, and letter in which is furnished the following:

1. The name of the Contractor and/or Subcontractor or Subordinate Subcontractor leasing the storage area.
2. The location of such leased space.

3. The leased area: the entire premises of certain areas of a warehouse giving the number of floors or portions thereof.
4. The date on which the material is first stored.
5. The value of the material stored.
6. A transfer of title of the material to the Owner once the Contractor receives payment.
7. A written waiver of all claims against the materials stored offsite by the lessor, lessee or owner of the location where such materials are stored.

9.11.2 The Contractor, his Subcontractors and Subordinate Subcontractors shall notify the Architect and the Owner to inspect, at least once each month, the materials being stored at any location.

9.11.3 The Contractor, his Subcontractors and Subordinate Subcontractors shall mark each sealed carton with the name and address of the Project and Architect.

9.11.4 A perpetual inventory shall be maintained for all materials held in storage for which payment has been requested.

9.11.5 Payment for materials stored off site shall be at the sole discretion of the Owner. Any additional costs to the Owner resulting from storage of material off site for which payment is requested, such as, but not limited to, travel expenses and time for inspectors, shall be back charged to, and paid by, the Contractor.

Add the following Section:

9.12 Payments: Applications for Payment (G702-703), and Change Orders (G701) are subject to approval, and so indicated by signature, by Maine State Housing Authority.

## ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

### Section 10.2 Safety of Persons and Property

Add the following clauses to Section 10.2.4:

10.2.4.1 When use or storage of explosives, or other hazardous materials, substances or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice.

10.2.4.2 If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner.

Add the following at the end of the first sentence of Section 10.3.4: “and Contractor has properly handled such materials.”

ARTICLE 11 - INSURANCE AND BONDS

Section 11.1 Contractor's Liability Insurance: Delete the semicolon at the end of Section 11.1.1.1 and add:

“, including private entities performing Work at the site and exempt from the coverage on account of the number of employees of occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project.”

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

“or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but required by the Contract Documents to provide the insurance required by that section;

Section 11.1.2: Delete the first sentence and replace it with the following:

11.1.2 “...The insurance required by Section 11.1.1 shall be written for not less than the following, or greater if required by law, and all such policies shall include the Owner as an additional named insured.”

.1 Worker's Compensation:

(a) State: Statutory

(b) Applicable Federal Statutory

.2 Employers Liability \$500,000

.3 Comprehensive General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Contractual Liability, Personal Injury, and Broad Form Property Damage (including coverage for XCU Hazards Liability) shall be as follows:

(a) Bodily Injury:

\$5,000,000 Each Occurrence

\$5,000,000 Annual Aggregate

(b) Property Damage:

\$2,000,000 Each Occurrence

\$2,000,000 Annual Aggregate

.4 Contractual Liability (including indemnification provisions):

(a) shall include coverage sufficient to meet the obligations in AIA Document A201-2007 under Section 3.18.



- .5 Products and Completed Operations:
  - (a) \$5,000,000 Aggregate
  - (b) shall be maintained for a minimum period of at least 1 year after either 90 days following Substantial Completion, or final payment, whichever is earlier.
- .6 Personal Injury, with Employment Exclusion deleted:
  - (a) \$5,000,000 Annual Aggregate
- .7 Comprehensive Automobile Liability for both owned vehicles and non-owned and hired vehicles:
  - (a) Bodily Injury:
    - \$5,000,000 Each Person
    - \$5,000,000 Each Occurrence
  - (b) Property Damage:
    - \$2,000,000 Each Occurrence
- .8 Aircraft Liability (owned and non-owned) when applicable: (Owner to approve limits proposed by Contractor.)
- .9 Watercraft Liability (owned and non-owned) when applicable: (Owner to approve limits proposed by Contractor).
- .10 All subcontractors shall carry policies with \$1,000,000.00 insurance coverage for their work on this Project.
- .11 The foregoing amounts are subject to change based on lender and investor requirements.

Section 11.1.3: Add the following clause :

.1 The Contractor shall furnish as many copies as may be requested of Certificates of Insurance herein required with one copy for Architect's use, which shall specifically set forth evidence of all coverage required herein. The form of the Certificate shall be ACORD form 25-s, completed and supplemented in accordance with AIA G-715 - 1991. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

Section 11.3 Property Insurance. Delete Section 11.3.1.4 and substitute the following:

11.3.1.4 The Contractor shall at the Contractor's own expense provide insurance coverage for materials stored off site after written approval of the Owner of the value established in the approval, and also for portions of the Work in transit until such materials are permanently attached to the Work.

Add the following clause to Section 11.3.1:

11.3.1.6 The insurance required by Section 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment, which shall be subject to the provisions of Section 11.3.7.

Add the following clause after Section 11.3.7:

11.3.7.1 The subrogation waiver shall not extend to rights any of the insured parties may have against another insured party for losses and damages falling within the deductible amounts of the policies of insurance pursuant to this Article 11, if such losses and damages are attributable in whole or in substantial part to the negligence or breach of contractual obligations of such other insured party.

Section 11.4 Performance Bond and Payment Bond: Delete Section 11.4.1 and substitute the following:

11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100% of the Contract Sum. The Contractor shall deliver the executed bonds promptly upon request of the Owner after execution of the Guaranteed Maximum Price Addendum. The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

## ARTICLE 12 – UNCOVERING AND CORRECTION OF WORK

No modifications.

## ARTICLE 13 - MISCELLANEOUS PROVISIONS

### Section 13.2 Successors and Assigns

13.2.1 Add the following at the end of the second sentence: “; provided, however, that consent to an assignment by Owner will not be unreasonably withheld by Contractor.”

Delete Section 13.2.2 and replace with the following:

13.2.2 The Owner may assign the Contract to an institutional lender providing construction financing for the Project, and the Contractor shall execute a written consent to such assignment provided the lender agrees in the assignment to assume the obligations of the Owner.

Add the following Section:

13.8 EQUAL OPPORTUNITY

13.8.1 The Contractor shall maintain polices of employment as follows:

13.8.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or sexual orientation. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin or sexual orientation. Such action shall include, but not be limited to, the following employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

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

13.8.1.3 The Contractor agrees to adhere to all Federal and State laws, rules and regulations, as well as those of Maine State Housing Authority, as enumerated in the Contract Documents.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

Section 14.2 Termination By The Owner For Cause

Delete the word "repeatedly" in Section 14.2.1.1.

Delete the word "repeatedly" in Section 14.2.1.3.

Delete "upon certification by the Initial Decision Maker that sufficient cause exists to justify such action," in the first line of Section 14.2.2.

ARTICLE 15 – CLAIMS AND DISPUTES

No modifications.

ARTICLE 16 – OTHER CONDITIONS OF THE CONTRACT

Add the following Sections:

16.1 The Contractor acknowledges that nothing in the performance of the Services of the Architect in connection with the Project implies any

undertaking for the benefit of, or which may be enforced by the Contractor, its subcontractors or suppliers, or the surety of any of them, and that the obligations of the Architect run solely to the benefit of the Owner.

- 16.2 Typographical errors shall not be grounds for additional payments.
- 16.3 The Architect is not responsible for the survey, identification, or removal of any hazardous materials, including asbestos and contaminated soil, on the Project.
- 16.4 The Contractor is not responsible for the survey, identification, or removal of any hazardous materials, including asbestos and contaminated soil, on the Project unless otherwise specified.
- 16.5 In the event the Contractor encounters material reasonably believed to be asbestos, contaminated soil, or other hazardous materials, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor, if in fact the material is asbestos or other hazardous materials and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or other hazardous materials, or when it has been rendered harmless, by written agreement of the Owner and Contractor. The Owner shall be responsible for contracting the removal of any and all asbestos or other hazardous materials.
- 16.6 The Contractor shall not be required to perform without consent any Work relating to asbestos or other hazardous materials.
- 16.7 Access to Records
  - 16.7.1 It is also agreed that the following Access to Records provision applies if Section 952 of the Omnibus Reconciliation Act of 1980 is found to apply to this contractual relationship. Until the expiration of four years after the furnishing of the services provided under this Contract, the Contractor will make available to the Secretary, U.S. Comptroller General, and their representatives, this Contract and all books, and documents and records necessary to certify the nature and extent of the costs for those services. If the Contractor carries out the duties of the Contract through a subcontract worth \$10,000.00 or more over twelve month period with a related organization, the sub period will also contain the access clause to permit access by the Secretary, Comptroller General, and their representative to the related organization's books and records.

End of Section 00 73 13