

**EXHIBIT "B" TO
OWNER-CONTRACTOR CONTRACT
BY AND BETWEEN
UNIVERSITY OF SOUTHERN INDIANA
AND _____**

SUPPLEMENTARY CONDITIONS

The following supplements modify, change, delete from, or add to the "General Conditions of the Contract for Construction", AIA Document A201, 2007 Edition. Where an Article of the General Conditions is modified or a Paragraph, Subparagraph or Clause thereof is modified or deleted by these supplements, the unaltered provisions of that Article, Paragraph, Subparagraph, or Clause shall remain in effect.

ARTICLE 1: GENERAL PROVISIONS

1.1.3 (Add the following to the end of the Subparagraph) "The Contractor acknowledges and agrees that the Contract Documents are sufficient to provide for the completion of the work and include Work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in accordance with applicable laws, codes, and customary standards of the construction industry.

1.1.9 (Add the following) Miscellaneous Definitions

- .1 The term "Project Manual" as used herein is the volume which include the bidding requirements, certain of the Contract Documents such as Conditions of the Contract and the Specifications.
- .2 The term "product" as used herein includes materials, systems and equipment.
- .3 The term "supplier" as used herein, includes a firm or organization furnishing or delivering products directly to the jobsite, and because of such direct delivery, could be construed under the lien laws of the State in which the work is being performed by having lien rights against the funds due the Contractor or Subcontractor on an open account basis and not having lien rights on the Work, will not be considered suppliers within the meaning of the Contract Documents.
- .4 A bidder selected to enter into a Contract with the Owner for Work included under the bidder's proposal is termed an "awardee", until such time as he is awarded a Contract and becomes the Contractor.
- .5 Where "request", "approval", "satisfactory", and similar words appear, it is the request, approval or satisfaction of the Architect that is intended.
- .6 Where "complete" is used, it shall mean "complete with connections, supports, attachments, and incidental items necessary for a finished and properly operating assembly or installation".
- .7 Where "drawing" is used, it shall mean plans and detail drawings, both large and small scale, furnished by the Architect for the purpose of showing the Work to be done.
- .8 Where the term "furnish" is used it shall mean to supply to another party for their use of installation, including cost of delivery and unloading at the job.

- .9 Where the term “install” is used it shall mean to distribute, uncrate, assemble, and fix into the intended final positions with the installer providing all miscellaneous hardware and supplies required to anchor and support securely, clean-up and dispose of rubbish.
 - .10 Where the term “connect” is used it shall mean to bring service(s) to the point of installation and make final connections to the service(s) to the installed equipment, and to provide miscellaneous auxiliary appurtenances necessary to make operable for its intended use.
 - .11 Where the term “provide” is used it shall mean to furnish, install and connect completely.
 - .12 Bonds as covered by the Instruction to Bidders shall be considered a part of the Contract Documents.
- 1.1 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
- 1.2.4 (Add the following) “If there should be a conflict between two or more of the Contract Documents, the following order of interpretation shall apply:
- .1 The terms and conditions as set forth in the Bidding Requirements, including legal advertisement thereof, shall have full force and effect until such time as the Owner – Contractor Contract is executed between the Owner and the Awardee.
 - .2 Where there is a conflict between the Bidding Requirements and the Contract Documents, the Contract Documents shall govern.
 - .3 Where requirements specifically set forth in the Owner – Contractor Agreement are in conflict with other Contract Documents, the Owner – Contractor Agreement shall govern.
 - .4 Where there is conflict between the requirements of the General Conditions of the Contract and these Supplementary Conditions, the requirements of these Supplementary Conditions shall govern, except where the requirements set forth in these Supplementary Conditions are contrary to law, in which case the provision in question shall be considered amended to conform to such law, and all the other provisions and requirements shall remain in full force and effect. The General Conditions of the Contract shall take precedence over other Contract Documents except for the Owner – Contractor Agreement.
 - .5 Where there is conflict between the Drawings and Specifications, a conflict within the Drawings or within the Specifications, the conflict shall be resolved by providing better quality or greater quantity as provided in the Supplementary Conditions, Clause 3.2.1.1.
 - .6 When a duplication of material or equipment occurs in the Drawings or the Specifications by assignment of Work to separate prime contracts, each Prime Contractor shall be deemed to have bid on the basis of each furnishing such material or equipment. The Architect will decide which Contractor(s) shall furnish the same and which contract amount shall be adjusted, for not incorporating such material or equipment into the Project.”
- 1.2.5 (Add the following) “It is the intent of the Contract Documents to accomplish a complete and first-grade installation in which there shall be installed new products of the latest and best design and manufacturer, and workmanship shall be thoroughly first class, executed by competent and experienced workmen.

- .1 Details of preparation, construction, installation and finishing encompassed by the Contract Documents shall conform to the best practices of the respective trades, and that workmanship, construction methods, shall be of first class quality so as to accomplish a neat and first class finished job.
 - .2 Where specific recognized standards are mentioned in the Specifications, it shall be interpreted that such requirements shall be complied with.”
- 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
- 1.6.1 (Delete and add the following) “The Drawings, Specifications, and other Documents prepared by the Architect are instruments of the Architect’s services through which the Work to be executed by the Contractor as described. The Owner owns said Drawings, Specifications, and Other Instruments of Service and as such shall determine their use and permit the use of copies, including reproducible copies of the Drawings, Specifications, and other Instruments of Service prepared by the Architect in connection with the Owner’s construction of the Project, its use, and occupancy. The Drawings, Specifications, and other Instruments of Service shall not be used on other Projects by the Contractor without the prior written consent of the Owner, Architect, and the Contractor shall take such action as may be necessary to prevent their use on other projects. The Contractor, Subcontractors, Sub-subcontractors, and material and equipment suppliers are granted a limited license to use (but not reproduce) applicable portions of the Drawings, Specifications, and other Instruments of Service appropriate to and for use in execution of their work under the Contract Documents. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to meet official regulatory requirements or for other purposes relating to the completion of the Project are not to be construed as publication, in derogation of the Owner’s copyright or other reserved rights”.

ARTICLE 2: OWNER

- 2.1.2 (Delete this Subparagraph in its entirety.)
- 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
- 2.2.2 (Delete and add with the following) “Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, including those charges and costs related to zoning changes, environmental impact statements, and similar requirements related to use of the site, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.”
- 2.2.3 (Delete and add the following) “The Owner shall not be responsible for furnishing surveys (unless required for the execution of the Work and requested by the Contractor in writing) or other information as to the physical characteristics of, legal limitations of, or utility locations for the Project site, but as necessary for the Work, shall furnish or cause to be furnished to the Contractor a legal description of the project site, which shall not constitute one of the Contract Documents. The Contractor shall not be entitled to additional compensation resulting from its failure to confirm the location of the site utilities or existing structures prior to the opening of its bid.”
- 2.2.4 (Delete and add the following) “Upon receipt of a written request from the Contractor, information or services under the Owner’s control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work”.
- 2.3 OWNER’S RIGHT TO STOP THE WORK

- 2.3.1 (Delete) The word “repeatedly”. (Add the following text to the end of the Subparagraph).
“This right shall be in addition to, and not in limitation of, the Owner’s rights under Paragraph 12.2.”

2.4 OWNER’S RIGHT TO CARRY OUT THE WORK

(Delete in its entirety and add the following) “If the Contractor defaults or neglects to carry out the Work in any respect in accordance with the Contract Documents and fails to commence to correct such default or neglect within 48 hours after written notice thereof from the Architect or the Owner, (except such period shall be 7 days if the notice is given after final payment), thereafter fails to use its best efforts to correct such default or neglect to the satisfaction of the Owner and Architect, or except where an extension of time is granted in writing by the Owner, fails to correct such default or neglect within 30 days of such notice to the satisfaction of the Architect and the Owner, then the Owner may, upon written notice to the Contractor and without prejudice to the other remedies the Owner may have, make good such deficiencies; provided that if such default or neglect results in a threat to the safety of persons or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice thereof. If the notice is given before final payment, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the costs of correcting such deficiencies, including compensation for the Architect’s additional services made necessary by such default, neglect, or failure and the Owner’s administrative and legal expense, including the time of the Owner’s personnel in dealing with such default. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.”

ARTICLE 3: CONTRACTOR

3.1 GENERAL

- 3.1.1 (Add the following) References to “the Contractor” shall be read as referring to each Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- 3.2.1 (Add the following) “Where there is a conflict in or between the Drawings and Specifications, the Contractor shall be deemed to have estimated on providing the better quality of Work and the larger quantity required. Only changes or interpretations covered by Addenda or written approval from the Architect will be permitted during construction of the Work.”

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.1 (Add the following) . . . Within fifteen (15) days after the Preconstruction Meeting, each Contractor is to assemble all necessary information and data discussed with the Owner and Architect during the post-bid meetings as identified in the Information to Bidders section of the Contract Documents, and submit updated information from those meetings as well as the following:

- .1 A Schedule of Values in the format and detail as required by the Architect.
- .2 Contractors safety program, including written Haz Com Program and a written random drug testing policy or program in compliance with Section 10.2.9 hereof.
- .3 Complete submittal schedule.

3.5 WARRANTY

(Delete in its entirety and add the following) "In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents or applicable as a matter of law and not in limitation of the terms of the Contract Documents, the Contractor warrants and guarantees that:

- .1 The Owner will have good title to the Work and materials and equipment incorporated into the Work will be new.
- .2 The Work and materials and equipment incorporated into the Work will be free from defects, including defects in the workmanship or materials.
- .3 The Work and equipment incorporated into the Work will be fit for the purpose for which they are intended.
- .4 The Work and materials and equipment incorporated into the Work will be merchantable.
- .5 The Work and materials and equipment incorporated into the Work will conform to the Contract Documents.

"Upon notice of the breach of the foregoing warranties or guarantees or other warranties or guarantees under the Contract Documents, the Contractor, in addition to other requirements in the Contract Documents, will commence to correct such breach and damage resulting therefrom within 48 hours after written notice thereof, thereafter will use its best efforts to correct such breach and damage to the satisfaction of the Owner and, except where an extension of time is granted in writing by the Owner, correct such breach and damage to the satisfaction of the Owner within 30 days of such notice; provided that if such notice is given after final payment hereunder, such 48 hour period shall be extended to 7 days. If the Contractor fails to commence to correct such breach and damage, or correct such breach and damage as provided above, the Owner, upon written notice to the Contractor and without prejudice to his other rights or remedies, may correct the deficiencies. The Contractor upon written notice to the Owner shall pay for the Owner, within 10 days after the date of such notice, the Owner's costs and expenses incurred in connection with such correction, including without limitation the Owner's administrative and legal expenses. The foregoing warranties and obligations of the Contractor shall survive the final payment and termination of the Contract".

3.6 TAXES

(Delete in its entirety and add the following) "Taxes which the Contractor must pay which are legally enacted at the time bids are received, whether or not effective, shall be paid by the Contractor.

- 3.6.1 Indiana Gross Retail Tax: Materials and properties purchased by Contracts with the Owner that becomes a permanent part of the structure or facilities constructed are not subject to the Indiana Gross Retail Tax (Sales Tax). A general exemption certificate must be filed with the vendor by the Contractor for exemption from payment of the tax on the exempt materials and properties purchased. The Owner will furnish "Exemption Certificates" upon request.
- 3.6.2 Indiana Gross Income Tax: In accordance with the Indiana Gross Income Tax Act, as amended, the Owner is a Withholding Agent for the payment of Indiana Gross Income Tax on Contracts with the Owner. As a Withholding Agent, the Owner is required to withhold from non-resident Contractors the Indiana Gross Income Tax."

3.8 ALLOWANCES

- 3.8.1 (Delete this provision in its entirety.)

3.9 SUPERINTENDENT

- 3.9.3 (Delete the second sentence of this provision and add the following) . . . “The Superintendent shall be satisfactory to the Architect and the Owner, and the Architect and Owner shall have the right to require the Contractor to remove a Superintendent from the Project whose performance is not satisfactory, and to replace the Superintendent with a Superintendent who is satisfactory to the Architect and Owner. The Contractor shall not replace the Superintendent without the consent of the Architect and the Owner, except with another Superintendent who is satisfactory to the Architect and Owner.”

3.15 CLEANING UP

- 3.15.3 (Add the following) . . . “If the Contractor fails to perform daily cleaning as specified herein, he will be notified in writing that if clean up is not performed within twenty-four (24) hours of such notification, clean up will be performed for the Owner and the cost thereof deleted from this Agreement.”

3.18 INDEMNIFICATION

- 3.18.1 (Add to the first line of this provision) the word, “defend” after the word, “indemnify.”

(Delete the following from lines 4 and 5 of this provision) "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),".

ARTICLE 4: ARCHITECT

4.1 GENERAL

- 4.1.1 (Add after the last sentence of this provision) “The term “Architect” “Architect/Engineer”, or “Engineer” as used herein means the Architect or his authorized representative.”

ARTICLE 5: SUBCONTRACTORS

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

- 5.2.4 (Add the following) . . . “The Contractor shall notify the Owner and the Architect of proposed substitution of Subcontractor, person, or entity a minimum of 10 days prior to proposed change. The Owner may require the Contractor to change a Subcontractor or Sub-subcontractor previously approved, and, if at such time the Contractor is not in default under this Agreement, the Contract sum shall be increased or decreased by the difference in the cost resulting from the change.”

5.3 SUBCONTRACTUAL RELATIONS

- 5.3.2. (Add the following to the end of this provision) . . . “Notwithstanding the provisions of this Section 5.3.1, any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor shall be pursuant to a written Subcontract between the Contractor and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier). The Architect will assume no responsibility for reviewing, monitoring, or verifying activities or relationships involving a Subcontractor or its Sub-subcontractor.”

- 5.3.3. (Add the following) . . . “**§5.3.3. Requirements for Contractors on Public Works Projects.**

Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of public authority bearing on the performance of the Work, including,

but not limited to, the provisions of Indiana's Requirements for Contractors on Public Works Projects (Indiana Code 5-16-13-1, et seq.)."

ARTICLE 6: CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD SEPARATE CONTRACTS

6.1.1 (Delete the last sentence of this Subparagraph.)

6.1 MUTUAL RESPONSIBILITY

6.2.4 (Delete the word . . . "wrongfully" . . . in this provision.)

(and add the following sentence at the end of this provision) . . . "If such other Contractors initiate legal or other proceedings against the Owner on account of damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its own expense, and if judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Contractor."

ARTICLE 7: CHANGES IN THE WORK

7.2 CHANGE ORDERS

(Add the following to the end of this provision) "**§7.2.2** Methods used in determining adjustments to the Contract Sum shall be those listed in Subparagraph 7.3.3."

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.3.5 (Add the following) "**§7.3.3.5** Change Order Pricing Guidelines

For each change over \$750.00, the Contractor shall furnish a detailed, written Proposal itemized according to these Pricing Guidelines. Any Subcontractor or Material Supplier pricing shall also be itemized according to these Pricing Guidelines. In order to expedite the review and approval process, all Proposals shall be prepared in the categories and in the order listed below.

- .1 Labor – All field labor shall be priced in compliance with Common Construction Wage Determination for this project, excluding fringe benefits, which are covered under Clause 2 below. The payroll is to be based on straight time only and is to include number of hours and rate of pay for each classification of work. If overtime is approved, list only the straight time portion in this item.
- .2 Fringes – All established payroll taxes, assessments and fringe benefits on the labor in item .1. This may include, but is not limited to, FICA, Federal and State Unemployment, Health and Welfare, Pension Funds, Workers' Compensation and Apprentice Fund. Each of the fringes is to be a separate line item.
- .3 Equipment Rentals – All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost. No rental charges will be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays will not be allowed.
- .4 Owned Equipment – All charges for certain owned heavy or specialized equipment at up to 100 percent of the cost listed by the Associated Equipment

Dealers Blue Book. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work will be the basis for the pricing. Downtime due to repairs, maintenance and weather delays will not be allowed.

- .5 Trucking – A reasonable delivery charge or per mile trucking charge for delivery of required materials or equipment. Charges for use of a pickup truck will not be allowed.
- .6 Overhead – Includes telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor, legal services, travel and parking expenses.
- .7 Materials
 - .1 All materials purchased by the Contractor and incorporated into the changed Work, showing costs, quantities, or Unit Prices of all items, as appropriate. Reimbursement or material costs shall only be allowed in the amount of the Contractor's actual cost including any and all discounts, rebates or related credits.
- .8 Miscellaneous – The following items are allowable at the cost of the Work, with no overhead or profit.
 - .1 The cost of extending the Bond and the cost of extending liability, property damage, builder's risk or specialty coverage insurance.
 - .2 The premium portion only for approved overtime (labor and fringes). The straight time portion is included in items .1 and .2.
 - .3 Fees for permits, licenses, inspections, tests, etc.
- .9 Costs which will not be reimbursed for Change Order Work include the following:
 - .1 Employee Profit Sharing Plans – regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed.
 - .2 Voluntary Employee Deductions – examples are United Way and U.S. Savings Bonds, etc.

7.3.3.6 (Add the following) “The cost of the Contractors overhead and profit on Change Orders shall be:”

- .1 For extra Work completed by the Contractor with his own labor, 15 percent shall be added as the allowance for overhead and profit.
- .2 For extra Work completed by the Subcontractors of the Contractor, 7.5 percent shall be added as the allowance for overhead and profit.
- .3 In order to facilitate checking of quotations for extras or credits, 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 cast will a change involving over \$750.00 be approved without such

itemization. The Contractor shall submit same to the Construction Manager within 10 days after receipt of proposal request.”

7.3.10 (Add the following to the end of this provision) . . . “When either the Owner or the Contractor disagree with the determination made by the Architect concerning adjustments in the Contract Sum and Contract Time, such disagreement shall be resolved in the manner set forth in Article 15.”

ARTICLE 9: PAYMENTS AND COMPLETION

9.3 APPLICATIONS FOR PAYMENT

(Add the following as a new Subparagraph) “**§9.3.1.3** Contractor shall submit with each monthly Application for Payment 1) an Affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous Application, was submitted and the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, and 2) partial Waiver of Lien is required from the Contractor on the first Pay Request and each one thereafter until the last or final Pay Request which will then require a full or Final Waiver of Lien.”

(Add the following as a new Subparagraph) “**§9.3.1.4** Owner will retain 10% of the monthly payment until the work is 50% completed and as approved by the Architect for labor performed and work properly in place, and for materials delivered to the site of the Work or in an approved storage site.

.1 There shall be no reduction of retainage granted on this project.”

9.3.2 (To supplement this Subparagraph, add the following) “Payment to Contractor for materials stored off site is discouraged. Where circumstances indicate that the Owner’s best interest is served by off-site storage, the Contractor shall make written request to the Architect for approval to include such material costs in his next progress payment. The Contractor’s request shall include the following information:

- .1 A list of the fabricated materials consigned to the project (which shall be clearly identified), giving the place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site.
- .2 Certification that items have been tagged for delivery to the project and that they will not be used for another purpose.
- .3 A letter from the Bonding Company indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party or their responsibility to complete the facility.
- .4 Evidence of adequate insurance covering the material in storage, which shall name the Owner as additionally insured.
- .5 Stored materials subject to weather related damage must be stored indoors.
- .6 Stored materials must be marked “Property of the University of Southern Indiana”.
- .7 Stored materials must be inspected by the architect before the Application for Payment is certified.
- .8 There must be a complete listing of all stored materials included with the application for payment.

- .9 There must be a legal transfer of ownership of the stored materials to the University of Southern Indiana to permit the university to claim the materials in case of a bankruptcy or some other legal problem with the entity storing the materials.
 - .10 Costs incurred by the Architect to inspect material in off-site storage shall be paid by the Contractor.
 - .11 Subsequent pay requests shall itemize the materials and their cost which were approved on previous pay requests and remain in off-site storage.
 - .12 When a partial payment is allowed on account of material delivered on the site of the Work or in the vicinity thereof or under possession and control of the Contractor but not yet incorporated therein, such material shall become the property of the Owner, but if such material is stolen, destroyed or damaged by casualty before being used, the Contractor will be required to replace it at his own expense.”
- 9.3.5 (Add the following) “On Contracts totaling \$100,000 or more, an escrow account shall be established in a financial institution, as escrow agent, selected by mutual agreement between the Contractor and the Owner at the time Contracts are executed. The establishing of an operation of the escrow account shall be in compliance with the requirements of IC-5-16-5.5, *et seq.* of the Indiana Code, which requires withholding of retainage by the Owner and the Contractor (where said Contractor subcontracts out parts of his Contract) and requires the establishment of an escrow account for deposit of the funds also retained.
- .1 The escrow agent shall promptly invest escrowed principal in accounts as shall be selected by the escrow agent in its discretion.
 - .2 The escrow agent shall hold the escrowed principal and income until receipt of notice from the Owner and the Contractor, or the Contractor and the Subcontractor, specifying the portion or portions of the escrowed principal to be released from the escrow and to whom such portion or portions are to be released. Upon receipt of such notice the escrow agent shall promptly remit the designated portion of escrowed principal and the same proportion of then escrowed income.
 - .3 The escrow agent shall be compensated for its services as the parties may agree in an amount not to exceed 50 percent of the escrowed income of the escrow amount.
 - .4 See Paragraph 9.10 – Final Completion and Final Payment, for provisions of retainage in escrow and final payment.”

9.4 CERTIFICATES FOR PAYMENT

- 9.4.1 (Delete and add the following) The Architect will, within seven days after the receipt of the Project Application for Payment, review the Project Application for Payment and either issue a Project Certificate for Payment to the Owner for distribution to the Contractor for such amounts as the Architect determines are properly due, or notify the Owner in writing of the reasons for withholding a Certificate as provided in Subparagraph 9.5.1. Such notification will be forwarded to the Contractor by the Architect.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

- 9.5.1 (Delete Clauses .1 through .7 and replace with the following)

- “1 The Contractor is in default of the performance of any of its obligations under the Contract Documents, including, but not limited to: failure to provide sufficient skilled workers; work, including equipment or materials, which is defective or otherwise does not conform to the Contract Documents; failure to conform to the Project Time Schedule; or failure to follow the directions of or instructions from the Architect or Owner.
- .2 The Contractor is in default of the performance of any of its obligations under another Contract which is has with the Owner.
- .3 The filing of the third party claims or reasonable evidence that third party claims have been or will be filed.
- .4 The Work has not proceeded to the extent set forth in the Application for Payment.
- .5 Representations made by the Contractor are untrue.
- .6 The failure of the Contractor to make payments to its Subcontractors, materialmen or laborers.
- .7 Damage to the Owner’s property or the property of another Contractor or person.
- .8 The determination by the Architect that there is a substantial possibility that the Work cannot be completed for the unpaid balance of the Contract Sum.
- .9 Liens filed or reasonable evidence indicating the probable filing of such liens.
- .10 The failure of the Contractor to submit O & M Manuals at 75% completion of project.”

(Add the following to Section 9.5 as a new Subparagraph) “**§9.5.4** Contractors application for payment shall reflect an equal percentage amount (within 2 – 3 percent) for labor and materials for Work completed. The Architect may adjust applications where labor exceeds materials or where materials exceed labor quantities in the Work completed columns. If the Contractor disputes a determination by the Architect with regard to Certificate of Payment, the Contractor nevertheless shall continue to prosecute the Work.”

9.7 FAILURE OF PAYMENT

9.7.1 (Change text) Each time “seven” appears in this Subparagraph, replace with “fourteen”. Delete the words “or awarded by arbitration” from the first sentence.

9.8 SUBSTANTIAL COMPLETION

9.8.1 (After . . . “Contract Documents” . . . insert the following) . . . “and when all required occupancy permits, if any, have been issued” . . .

9.8.3 (Add the following to the end of this provision) If, upon the Architect’s / Engineer’s completion of the initial inspection and the second inspection, there remains incomplete or unsatisfactory work, the Contractor will be back-charged for the time to satisfactorily complete the Work accrued by the Owner and Architect / Engineer including the Architect’s /Engineer’s consultants. Charges will be at each of the party’s current prevailing rate and commence following the second inspection. The back charges will be deducted from the Project Closeout cost indicated on the Contractor’s Schedule of Values.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 (Place a period after “complete” in line 4 and delete the remainder of the test in this Subparagraph and replace with the following) . . . “In the event of such partial occupancy or use, the Architect shall assign responsibilities to the Owner and the Contractor with respect to payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, insurance, and the commencement of warranties required by the Contract Documents.”

9.9.3 (Add the following to the end of this provision) “Any Agreement as to the acceptance of the Work not complying with the requirements of the Contract Documents shall be in writing.”

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.10.2 (Add the following to the end of this provision) “The Contractor shall furnish such evidence as may be necessary to show that any out-of-state subcontractor or supplier has fully met the requirements of payment of taxes as established in any law of the State or local subdivision thereof which may be in effect at the time of final payment. The Owner will require the submission of such proof of evidence before final payment will be approved or made. The following must be submitted to the Architect before approval of final payment:

- .1 Affidavit of Payment as required under this Paragraph shall be in the form of AIA Document G706 – Contractor’s Affidavit of Payment of Debt and Claims.
- .2 Release of liens as required under this Paragraph shall be in the form of AIA Document G706A – Contractor’s Affidavit of Release of Liens.
- .3 Consent of Surety as required under this Paragraph shall be in the form of AIA Document G707 – Consent of Surety Company to Final Payment.
- .4 Submit releases and final unconditional waivers of lien from major subcontractors and suppliers.
- .5 Submit certification stating that no materials containing asbestos were incorporated into the work.”
- .6 Submit certification that all punch list items have been completed.”

9.10.3 (Add the following to the end of this provision) “Final payment, constituting the unpaid balance of the Contract Sum, shall be paid to the Contractor in full, including retainage or escrowed principal and escrowed income by the escrow agent, no less than 60 days following the date of Substantial Completion. If at that time there are remaining uncompleted items, an amount equal to 200 percent of the value of each item as determined by the Architect shall be withheld until said items are complete, and a Final Certificate of Payment issued by the Architect.”

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.8 (Add the following to the end of this provision) “The Contractor acknowledges that the safety of the Owner’s students, employees, and guests is of the utmost importance. The Contractor will take no action which would jeopardize the safety of the Owner’s students, employees, or guests and, without the Owner’s written approval, shall take no action which would interfere with the Owner’s activities.”

(Add the following to Section 10.2 as a new Subparagraph) “§10.2.9 The Contractor shall maintain a random drug testing program, and the program shall be reduced to writing, a copy of which shall be provided to Owner prior to the commencement of the Work. The drug testing program shall contain at least a five (5) drug panel that tests for the following drugs: amphetamines, cocaine, opiates (92000 ng/ml), PCP and THC. All the employees of the Contractor are subject to at least annual testing, and at least one-twelfth (1/12th) of twenty-five percent (25%) of the Contractor’s total workforce shall be selected randomly each month for testing. The random drug testing program operated by the Contractor shall contain a progressive discipline component for employees who fail the drug test that meets at least the following minimum steps:

- .1 the first positive test shall result in a thirty (30) day period of ineligibility for work, and upon returning to work, one (1) year of unannounced follow-up testing;
- .2 a second positive test shall result in a ninety (90) day period of ineligibility for work, and upon returning to work, one (1) year of unannounced follow-up testing;
- .3 a third positive test shall result in a one (1) year period of ineligibility for work, and upon returning to work, one (1) year of unannounced follow-up testing; and
- .4 any subsequent positive test shall be treated the same as a third positive test.

At the discretion of the Contractor, the discipline issued above may include more severe discipline including, but not limited to, dismissal of the employee. Upon request by the Owner, Contractor shall provide written proof of the annual and monthly tests for all applicable employees of the Contractor.”

10.4 EMERGENCIES

(To the end of this Paragraph add the following) “Nothing in this paragraph shall be construed as relieving the Contractor from the cost and responsibility for emergencies covered hereby, which with normal diligence, planning and the close supervision of the Work as required under the Contract, could have been foreseen or prevented.”

ARTICLE 11: INSURANCE AND BONDS

11.1 CONTRACTOR’S LIABILITY INSURANCE (Delete this Paragraph in its entirety and Add the following):

“Insurance requirements and obligations shall be pursuant to the “Insurance” section of the Owner-Contractor Contract, which section is incorporated herein by reference.”

11.2 OWNER’S LIABILITY INSURANCE (Delete this Paragraph in its entirety)

11.3 PROPERTY INSURANCE (Delete this Paragraph in its entirety)

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

12.2 CORRECTION OF WORK

12.2.2.1 (Delete this provision entirely and add the following) “Within 48 hours after written notice from the Architect, or the Owner (except such period shall be 7 days when notice is given after final payment) that the work does not conform to the Contract Documents, or immediately upon oral notice, if the nonconformance constitutes a threat to the safety of persons or property, the Contractor, without waiting for the resolution of disputes that may exist, shall commence to correct such nonconformance, shall thereafter use its best efforts to correct such

nonconformance to the satisfaction of the Architect and the Owner, shall complete necessary corrections so that the nonconformance is eliminated to the satisfaction of the Architect, and the Owner within 30 days of such notice. The Contractor shall bear all costs of correcting the nonconformance, including additional testing and inspections and additional service fees of the Architect. The notice provided for in this Subparagraph 12.2.1 may be given at any time. It is the intent that the obligations under this Subparagraph 12.2.1 shall continue to apply after final completion and final payment.”

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 (To the end of this Subparagraph add the following) “The acceptance of nonconforming Work by the Owner shall be by written Change Order, signed by the Owner’s authorized representative. No person has authority to accept nonconforming Work except pursuant to such written Change Order.”

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.5.1.1 (Add the following) “Refer to Section 01400 – Quality Requirements, for additional provisions on this subject.

13.5.4 (Delete this Subparagraph in its entirety and replace with the following) “Certificates of inspection, testing or approval, as required by Paragraphs 13.5.1 or 13.5.2, shall be secured by the Contractor using an independent agency, subject to the approval of the Architect, and Owner. The independent agency shall complete field work, testing, and prepare the test reports, logs, and certificates promptly; and deliver the required number of copies directly to the Architect for transmittal to the Owner in a timely manner.”

13.6 INTEREST

Delete this Paragraph in its entirety. References to Paragraph 13.6 elsewhere in the Contract Documents shall also be deleted.

ARTICLE 14: TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR (Delete this Provision in its entirety and replace with the following).

14.1.1 Events of Default; each of the following constitutes an event of default of the Contractor:

.1 The failure of the Contractor to perform its obligation under the Contract Documents or under the Contract Documents pertaining to other agreement which the Contractor may have with the Owner and to proceed to commence to correct such failure within 48 hours after written notice thereof from the Owner or the Architect or such lesser time as is provided in the Contract Documents, or thereafter to use its best efforts to correct such failure to the satisfaction of the Owner, or, except where an extension of time is granted in writing by the Owner, to correct such failure within 30 days after written notice thereof.

.2 The failure of the Contractor to pay its obligations as they become due, or the insolvency of the Contractor.

14.1.2 Owner's Remedies; upon the occurrence of an event of default the Owner will have the following remedies, which will be cumulative:

.1 To order the Contractor to stop the Work or part of it, in which case the Contractor will do so immediately.

- .2 To perform through others all or part of the Work remaining to be done and to deduct the cost thereof from the unpaid balance of the Contract Price;
 - .3 To terminate this Agreement and take possession, for the purpose of completing the Work or part of it, materials, equipment, scaffolds, tools, appliances and other items belonging to or possessed by the Contractor, of which the Contractor hereby transfers and assigns to the Owner for such purpose, and to employ a person or persons to complete the Work, including the Contractor's employees, and the Contractor will not be entitled to receive further payment until the Work is completed;
 - .4 Other remedies which the Owner may have at law or in equity or otherwise under the Contract Documents.
- 14.1.3 **Payments Due Contractor:** If the unpaid balance of the Contract Sum exceeds the cost of finishing the work, including compensation of the Architect's additional services and costs, expenses, or damages incurred by the Owner as a result of the event of default, including attorney's fees and the administrative expense of the Owner's staff, such excess will be paid by the Contractor. If such costs exceed the unpaid balance, the Contractor will pay the difference to the Owner. The amounts to be paid by the Owner or the Contractor will be certified by the Architect, and such certification will be the final determination of the amount owed, except for sums coming due thereafter. The obligations under this subparagraph will survive the termination of this Agreement.
- 14.2 **TERMINATION BY THE OWNER FOR CAUSE** (Delete this Paragraph in its entirety and replace with the following)
- 14.2 (Add the following) **DEFAULT OF THE OWNER**
- 14.2.1 **Events of Default;** except of the failure to pay the Contractor which will be subject to the terms of the General Conditions and Supplementary Conditions of the Contract, the following constitutes the exclusive event of default of the Owner:
- .1 The failure of the Owner to perform its obligations under the Contract Documents and to correct such failure within 90 days after written notice thereof from the Contractor.
- 14.2.2 **Contractor's Remedies;** upon the occurrence of an event of default by the Owner, unless the Owner admits in writing that it is in default, except as expressly provided in the General Conditions or the Supplementary Conditions of the Contract, the Contractor's sole and exclusive remedy will be to submit the dispute to the Architect for its decision under Paragraphs 4.7 and 4.8 of the General and Supplementary Conditions of the Contract for the Project. If the Owner admits in writing that it is in default, then the Contractor will be entitled to remedies which it would otherwise have at law or in equity.
- 14.3 **SUSPENSION BY THE OWNER FOR CONVENIENCE** (Delete this Paragraph in its entirety and replace with the following)
- 14.3 (Add the following) **TERMINATION FOR THE CONVENIENCE OF THE OWNER**
- 14.3.1 The Owner may, in its discretion and without cause, by written notice to the Contractor terminate the Contract for the Owner's convenience.
- 14.3.2 Upon receipt of a written notice from the Owner terminating the Contract without cause and for the Owner's convenience, the Contractor will 1) immediately cease performing the Work, unless otherwise directed by the Owner, in which case the Contractor will take the action directed by the Owner, 2) take reasonable and necessary action to protect and

preserve the Work, and 3) unless otherwise directed by the Owner, terminate agreements with Subcontractors and suppliers.

- 14.3.3 If the Contract is terminated without cause and for the Owner's convenience and there exists no event of the Contractor's default, as defined in Paragraph 14.1 of these Supplementary Conditions, the Owner will pay the Contractor, for Work performed under the Contract up to the date the notice of termination is received by the Contractor at the rates for Work performed under the Contract, including overhead and profit up to the date of termination, for Work necessary to protect and preserve the Work, as determined by the procedures applicable to Change Orders under Subparagraph 7.3.3, the reasonable and necessary costs of terminating the Contractor's agreements with Subcontractors and suppliers, and other costs incurred by the Contractor directly as a result of the termination of the Contract.
- 14.3.4 If the Contract is terminated without cause and for the Owner's convenience and there exists an event of the Contractor's default, as defined in Paragraph 14.2 of these Supplementary Conditions, the Contractor will be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default under the Standard Form of Agreement Between Owner and Contractor.
- 14.3.5 The termination of the Contract shall be with or without prejudice to rights or remedies which exist at the time of termination.
- 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE (delete this paragraph in its entirety).

ARTICLE 15: CLAIMS AND DISPUTES

- 15.1.1 (Add to the following to the end of Subparagraph 15.1.1) . . . "The Contractor shall not knowingly (as "knowingly" is defined in the Federal False Claims Act, 31 USC Section 3729 et seq.) present or cause to be presented a false or fraudulent Claim. As a condition precedent to making a Claim, the Claim shall be accompanied by an affidavit sworn to before a notary public or other person authorized to administer oaths in the State of Indiana and executed by an authorized representative of the Contractor, which states that:

The Claim which is submitted herewith complies with Subparagraph 4.3.1 of the Supplementary Conditions, which provides that the Contractor shall not knowingly present or cause to be presented a false or fraudulent Claim."

- 15.1.2 (Delete the words, "either the Owner or" from the first sentence of this provision, replace the words "other party" with "Owner" in the first sentence of this provision, and add the following to the end of this provision) "Failure to do so shall be an irrevocable waiver of the Claim by Contractor. Regardless of any other provision in the Contract Documents to the contrary, the Contractor will not be entitled to damages or additional compensation from the Owner or Architect on account of delays caused by persons, except to the extent permitted under this Paragraph 15.1."

- 15.1.4 (Add the following phrase at the beginning of last sentence) "Except as provided herein,"

- 15.1.5.1 Claims for Additional Time. (Delete entirely and add the following) "If the Contractor is delayed, disrupted or otherwise affected (collectively "Delay") in its progress of the Work by one of the delays for which an extension of time is permitted and gives the Architect written notice specifically describing the Delay within 48 hours of its commencement, the date of the Substantial Completion of the Work will be extended by Change Order for such reasonable time as the Architect may determine. The failure to give such notice will constitute an irrevocable waiver of the Contractor's right to seek an extension for such Delay.

The only Delays for which the Contractor will be entitled to an extension of the time for completion will be Delays caused by the Architect, or the Owner, physical damage to the Project over which the Contractor has no control, third party labor disputes beyond the control of the Contractor, and unusually severe weather conditions not reasonably anticipated (temperature, rain or other precipitation within thirty-three percent of normal amounts for the time of the year covered by the Agreement shall not be considered unusually severe weather conditions). Extensions of time will only be granted pursuant to the procedures for Change Orders set forth in the General Conditions. The Contractor agrees not to make claims for compensation for Delays or acceleration in the performance of the Work resulting from acts or failure to act by the Owner, the Architect, or the employees, agents or representatives of the Owner, the Architect, and agrees that such other claims shall be fully compensated only by an extension of time to complete the Work, regardless of when granted.” The Contractor shall take the number of days of inclement weather as indicated in the U.S. Weather Bureau Reports and the Project Schedule into account when preparing his bid proposal. Historical data for all areas may be obtained from:

U.S. Department of Commerce
National Climatic Data Center
Federal Building
Ashville, NC 28801
Phone (704) 271-4800

www.ncdc.noaa.gov/ol/climateproducts.html

The Contractor shall include in his bid sufficient monies to cover the required manpower, equipment, protection, etc. to complete his Work in accordance with the Project Guideline Schedule, accounting for inclement weather. It is the Contractors obligation to provide a copy of the National Climatic Center report with any weather delay claim filed. This includes the current information as well as the monthly averages available at the time of bidding. The Contractor nor any Subcontractor shall be due any additional compensation for an extension of time granted the Contractor, or granted to another prime Contractor for a weather delay extension. The Contractor may receive additional days only.”

(Add the following as a new Subparagraph) “**§15.1.7 BACK CHARGES**

- 15.1.7.1 The Contractor causing damage to the Work of another Contractor shall be responsible for the repair and replacement of such damaged Work. Back charges shall be made when corrections are not made promptly.”
- 15.1.7.2 The Owner reserves the right to pay the Contractor originating the back charge from monies due the Contractor who is responsible for the Work required by same and shall deduct it from the amount due the said responsible Contractor.”
- 15.1.7.3 Contractor originating back charges will determine the amount of the back charges in accordance with Article 7, Changes in the Work, of the General Conditions of the Contract, in order to obtain the Architect’s approval”.
- 15.1.7.4 Contractors under direct Contract with the Owner will be expected to take care of back charges originating with Subcontractors under their employ under the terms and conditions as established in the General Conditions of the Contract, Article 5 and Article 6. Contractors under direct Contract with the Owner, and their Sureties, shall indemnify and save the Owner harmless from claims of this type, including paying for

legal expenses necessary to remove or settle any liens or other legal claims against the Owner.”

15.2 INITIAL DECISION

(Add the following as a new Subparagraph) “**§15.2.9** Within 10 days of a written request, the Contractor will make available to the Owner or its representative books, records, or other documents in its possession or to which it has access relating to a claim and shall require its Subcontractors, regardless of tier, and materialmen to do likewise.”

15.4 ARBITRATION

(Delete Subparagraphs 15.4.1 through 15.4.3 in their entirety and add the following) "Any and all disputes arising relating to these Contract Documents shall be settled by binding arbitration in accordance with the Construction Arbitration Rules of the American Arbitration Association, and any judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Indiana, before one (1) arbitrator who shall be an attorney having substantial experience in construction law issues. However, neither party shall institute an arbitration, or any other proceeding to resolve such disputes between the parties before that party has sought to resolve disputes through direct negotiation with the other party. If disputes are not resolved within two (2) weeks after a demand for direct negotiation, the parties shall attempt to resolve disputes through mediation conducted in Evansville, Indiana. If the parties do not promptly agree on a mediator, either party may request the American Arbitration Association to appoint a mediator who shall be an attorney having substantial experience in construction law issues. If the mediator is unable to facilitate a settlement of disputes within twenty-one (21) days, the mediator shall issue a written statement to the parties to that effect and the aggrieved party may then seek relief through arbitration as provided above. The fees and expenses of the mediator shall be split and paid equally by each of the parties. In the event of any arbitration between the parties hereto involving these Contract Documents or the respective rights of the parties hereunder, the party who does not prevail in such arbitration shall pay to the prevailing party reasonable attorneys' fees, costs and expenses of such arbitration incurred by the prevailing party. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving more than two (2) parties. Either party may apply to any court of competent jurisdiction for injunctive relief or other interim measures in aid of the arbitration proceedings or to enforce the arbitration award, but not otherwise, and the non prevailing party shall be responsible for all costs thereof, including but not limited to attorney fees. Any such application to a court shall not be deemed incompatible or a waiver of this section. The arbitrator shall be required to make written findings of fact and conclusions of law to support their award. Notwithstanding anything to the contrary in the Commercial Arbitration Rules and supplementary procedures, the arbitrator shall not be authorized or empowered to award punitive damages or damages in excess of the amounts set forth within these Contract Documents, and the parties expressly waive any claim to such damages.”

(Add the following Article) “ARTICLE 16: EQUAL OPPORTUNITY

15.1 POLICIES OF EMPLOYMENT

15.1.1 The Contractor and Subcontractors shall not discriminate against employee or applicant for employment because of race, religion, color, sex or national origin. 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 or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

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

IN WITNESS WHEREOF, the parties acknowledge and accept these Supplementary Conditions.

UNIVERSITY OF SOUTHERN INDIANA

KEY CONSTRUCTION CO. INC.

By: _____
Steve Bridges, Vice President for
Finance and Administration

By: _____
Printed Name: _____
Title: _____

ATTEST:

ATTEST:

By: _____
Kindra Strupp, Vice President
Marketing and Communications

By: _____
Printed Name: _____
Title: _____

“USI”

“Contractor”