

SECTION 00 72 14 - GENERAL CONDITIONS - SMALL PROJECT

**TABLE OF ARTICLES**

Article 1	General Provisions
Article 2	Owner
Article 3	Contractor
Article 4	Administration of the Contract
Article 5	Subcontractors and Material Suppliers
Article 6	Construction by Owner or by Separate Contractors
Article 7	Changes in the Work
Article 8	Time
Article 9	Payment and Completion
Article 10	Protection of Persons and Property
Article 11	Insurance and Bonds
Article 12	Uncovering and Correction of Work
Article 13	Miscellaneous Provisions
Article 14	Termination or Suspension of the Contract
Article 15	Claims and Disputes
Article 16	Submittals

**ARTICLE 1 GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS**

1.1.1 Certain terms and words used throughout these Contract Documents shall be defined as follows:

1.1.1.1 **Procurement Requirements:** Consist of the Invitation to Bid, Instructions to Bidders, the Trade Proposal Form, and other sample bidding and contract forms.

1.1.1.2 **Agreement:** A legal instrument executed by the Owner and the Contractor binding the parties to the terms of the Contract. The Agreement defines the relationships and obligations between the Owner and Contractor. It incorporates all other Contract Documents by reference.

1.1.1.3 **Contract Documents:** Consist of the Procurement Requirements, the Agreement between Owner and Contractor (hereinafter the Agreement), General Conditions, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract.

- 1.1.1.4 **Contract:** The Contract Documents form the Contract for Construction. The Contract for Construction or Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.
- 1.1.1.5 **Project Management Website (PMW):** Owner's project administration, coordination, and communication website, hosted by Site|folio, for submitting projects documents and other information for exchange and approval and final storage.
- 1.1.1.6 **Work:** 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. The Work may constitute the whole or a part of the Project.
- 1.1.1.7 **Project:** The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.
- 1.1.1.8 **Drawings:** The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.1.9 **Specifications:** The portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.1.1.10 **Project Manual:** The Project Manual is a volume assembled for the Work which may include the Procurement Requirements, sample forms, Conditions of the Contract and Specifications.
- 1.1.1.11 **Owner:** The person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's Project Manager.
- 1.1.1.12 **Contractor:** The person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- 1.1.1.13 **Subcontractor:** The person or entity contracted with the Contractor, either directly or indirectly, to provide Work to the Project.
- 1.1.1.14 **Material Supplier:** Material supplier who is to furnish materials for the Project.
- 1.1.1.15 **Architect:** The person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The

term "Architect" means the Architect, the Architect's consultants, or the Architect's representative.

- 1.1.1.16 **Owner's Milestones:** Dates the Owner has identified that certain items must be completed by which are essential to the completion of the project. Dates are indicated on schedule agreed to by the Contractor and Owner.
- 1.1.1.17 **MBE:** Minority-Owned Business Enterprise: Fifty-one percent ownership of business by a minority group member (African Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indians, Native Americans). If publicly owned business, at least 51 percent of the stock is owned by one or more minority group member; and management and daily operation of the business are controlled by those minority group members; and business must be located in the United States or its trust territories; and the minority group members must be U.S. citizens.
- 1.1.1.18 **WBE:** Women-Owned Business Enterprise: Fifty-one percent ownership of business by a woman or women. If publicly owned business, at least 51 percent of the stock is owned by one or more women; and management and daily operation of the business are controlled by women; and business must be located in the United States or its trust territories; and the female ownership/management must be U.S. citizens.
- 1.1.1.19 **DBE:** Diverse-Owned Business Enterprise: Fifty-one percent ownership of business by a veteran, service disabled veteran, lesbian, gay, bisexual, or transgender. If publicly owned business, at least 51 percent of the stock is owned by one or more minority group members; and management and daily operation of the business are controlled by those minority group members; and business must be located in the United States or its trust territories; and the minority group members must be U.S. citizens.

## 1.2 REFERENCES

- 1.2.1 Reference to the printed codes, guides, or standard specifications of any Institute, Society or other organization or to any manufacturer's installation directions, shall be the latest edition thereof, unless laws, ordinances, rules or regulations require compliance with a specific edition, in which case the reference shall be to such edition.

## 1.3 DRAWINGS AND SPECIFICATIONS

- 1.3.1 Drawings and Specifications are complementary and what is called for by one shall be as binding as if called for by both. Should the drawings, specifications and/or other instructions be contradictory in any particular, or should there be apparent errors in either, or should there be any doubt as to the meaning of either, the Contractor shall refer the matter to the Owner whose decision thereon shall be conclusive.
- 1.3.2 Figures shall have precedence over scaled measurements and details over general drawings.
- 1.3.3 For convenience of reference, the specifications are separated in sections each bearing a title. Other sections and titles may appear throughout the Contract Documents. Such

facts shall not be deemed to be nor shall they be the basis for any request that the Owner make a designation as to the limits of any phase of the Project, or as to what trade shall perform any part thereof. The Contractor shall keep one copy of all drawings and specifications at the site, in good order, available to the Owner.

- 1.3.4 Contract Documents are available to the Contractor on the Owner's Project Management Website (PMW). All copies of drawings and specifications downloaded from the Owner's Project Management Website (PMW) or furnished from a reproduction company are the property of the Owner and shall not be used on any other work.

#### 1.4 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

- 1.4.1 The intent of the Contract Documents is to provide a complete functioning structure or installation as indicated.
- 1.4.2 The transportation, unloading, storing, erection or installation, testing as indicated, and making operable of all parts of the Project shall be included under this Contract, at times appropriate thereto.

#### 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

- 1.5.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are instruments of service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants. All copies of instruments of service, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely by the Owner. They are not to be used by the Contractor or any Subcontractor or material or equipment supplier on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner. The Owner authorizes the Contractor, Subcontractors and material or equipment suppliers to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of copyrights or other reserved rights.

## **ARTICLE 2 OWNER**

### 2.1 OWNER'S STORAGE OF MATERIALS OR INSTALLATION OF EQUIPMENT

- 2.1.1 The Owner reserves the right to store materials or install fixtures or equipment in any or all Project buildings before acceptance of the Project and without implying thereby any acceptance of the Project.

**2.2 WAIVERS**

- 2.2.1 The Owner shall be entitled to waive, in writing, any obligation of the Contractor provided herein; however, any such waiver shall not constitute a future waiver of same or any other obligation.

**ARTICLE 3 CONTRACTOR**

**3.1 SUBSTITUTIONS**

- 3.1.1 No substitutions or variations from the Specifications and Drawings, other than those which are approved in writing by the Owner from the official substitution sheet and incorporated into the Agreement, will be permitted after the Agreement is signed. The Contractor shall have the right, after entering into the Agreement, to request the Owner's approval of a substitute material generally considered to be equal to that named in the Contract Documents. Requests for approval of any substitute must be submitted in writing to the Owner, together with all necessary supporting data, within 15 days after the signing of the Agreement. The Owner shall be the sole judge of the suitability, acceptability and equality of the substitute material and may accept or reject the same. No material, not accepted by the Owner in writing, may be substituted for a specified material. If the substitution of any material or equipment increases costs in any way, these costs shall be borne by the Contractor.
- 3.1.2 If the individual specification sections state that no substitutions are allowed, the Contractor shall not propose any substitutions for that product on the Official Substitution Sheet.

**3.2 PROJECT MANAGEMENT**

**3.2.1 Project Management Website (PMW)**

- 3.2.1.1 The Contractor shall use the Owner's PMW for purposes of managing project communication and documentation until Final Completion. The PMW will include the following:
- 3.2.1.1.1 Project directory. – Owner's listing of the key project team members.
  - 3.2.1.1.2 Project correspondence. – ASIs, RFIs, and PRs.
  - 3.2.1.1.3 Meeting minutes. - Uploaded to the appropriate project file folder.
  - 3.2.1.1.4 Contract modifications forms and logs. - i.e., COP's and CO's.
  - 3.2.1.1.5 RFI forms and logs.

- 3.2.1.1.6 Photo documentation. - Upload to the appropriate project "Photos" page.
- 3.2.1.1.7 Schedule. - Upload to the appropriate project file folder.
- 3.2.1.1.8 Submittals, forms, and logs. - Upload to the appropriate project file folder.
- 3.2.1.1.9 Payment application forms. - Upload to the appropriate project file folder.
- 3.2.1.1.10 Drawing and specification document hosting, viewing, and updating.
- 3.2.1.1.11 Reminder and tracking functions.
- 3.2.1.1.12 Archiving functions. - Such as the Contractor's employees who are no longer employed by the Contractor.
- 3.2.2 Project Correspondence: All correspondence shall be communicated in the form of RFI's- and transmitted via the PMW.
- 3.2.3 Preconstruction Meeting:
  - 3.2.3.1 The Contractor shall schedule a preconstruction meeting before starting construction no later than 7 days after execution of the Agreement. The meeting shall be held at Project site or another convenient location. The Contractor shall conduct the meeting to review responsibilities and personnel assignments.
  - 3.2.3.2 Attendees: Authorized representatives of the Owner, the Architect, and its consultants; the Contractor and its superintendent; Subcontractors; Material Suppliers; and other concerned parties shall attend the conference. All participants at the conference shall be familiar with the Project and authorized to conclude matters relating to the Work.
- 3.2.4 SWPPP (Storm Water Pollution Prevention Plan) Preconstruction Meeting:
  - 3.2.4.1 The Contractor shall schedule a preconstruction meeting before earth disturbing activities commence. The meeting shall be held at the Project site. The Contractor shall conduct and document the meeting per the Contract Documents and the Owner's Storm Water Pollution Prevention Plan.
- 3.2.5 Progress Meetings:
  - 3.2.5.1 The Contractor shall conduct progress meetings at weekly intervals and shall coordinate dates of meetings with preparation of payment requests.
  - 3.2.5.2 Attendees: In addition to representatives of the Owner, Contractor, Subcontractor, Material Supplier, and other entity concerned with current progress or involved in planning, coordination, or performance of future activities shall be represented at these meetings. All participants at the meeting

shall be familiar with the Project and authorized to conclude matters relating to the Work.

- 3.2.5.3 Minutes: Contractor will record and electronically distribute meeting minutes to designated representatives within 24 hours of the completion of the meeting.

3.2.6 Post Construction Meeting:

- 3.2.6.1 When requested by the Owner, the Contractor shall conduct a post construction meeting at Project site two weeks after fixturing begins to discuss any activities remaining and to evaluate success of the Project.
- 3.2.6.2 The Contractor shall submit Record Drawings (red-lined as-built drawings) to Owner prior to meeting transmitted via the PMW.
- 3.2.6.3 Attendees: Authorized representatives of the Owner, the Architect, and their consultants; the Contractor and its superintendent; major Subcontractors; suppliers; and other concerned parties shall attend the conference. All participants at the meeting shall be familiar with the Project and authorized to conclude matters relating to the Work.

3.2.7 Warranty Meeting:

- 3.2.7.1 The Contractor shall conduct a warranty meeting at the Project site one year after completion of the Work including a walk-through to identify and discuss any issues and problems that arose during the one-year warranty period.
- 3.2.7.2 The Contractor shall provide a detailed report of the meeting identifying items to be corrected, transmitted via the PMW.
- 3.2.7.3 Attendees: Authorized representatives of the Owner, the Contractor, and other concerned parties shall attend the conference. All participants at the conference shall be familiar with the Project and authorized to conclude matters relating to the Work.

3.2.8 Requests For Information (RFIs)

- 3.2.8.1 Immediately on discovery of the need for additional information or interpretation of the Contract Documents, Contractor shall prepare and submit an RFI to the Owner, transmitted via the PMW. Submit RFIs in sequential order. Complete the request portion and include drawings or additional information as PDF attachments. The "Need Response By" date must be entered to validate request. A properly executed new RFI will be distributed to Architect and Owner, and the RFI log will be updated.
  - 3.2.8.1.1 Only the Contractor may submit an RFI. Architect or Owner will return RFIs submitted by other entities.
  - 3.2.8.1.2 The need for an RFI does not necessarily constitute grounds for a Change Order.

- 3.2.8.2 Architect will review each RFI, determine action required, and respond. Allow 72 hours for Architect's response for each RFI. RFIs received by Architect after 1:00 p.m. will be considered as received the following working day.
  - 3.2.8.2.1 The following types of RFIs are considered unnecessary and will be returned without action:
    - 3.2.8.2.1.1 Requests for approval of submittals.
    - 3.2.8.2.1.2 Requests for approval of substitutions.
    - 3.2.8.2.1.3 Requests for information already indicated in the Contract Documents.
    - 3.2.8.2.1.4 Requests for adjustments in the Contract Time or the Contract Sum.
    - 3.2.8.2.1.5 Requests for interpretation of Architect's actions on submittals.
    - 3.2.8.2.1.6 Incomplete RFIs or inaccurately prepared RFIs.
  - 3.2.8.2.2 Architect and Owner may claim compensation for the cost of their time and materials as a result of unnecessary RFIs. Compensation will be assessed from the Contractor in accordance with the General Conditions.
- 3.2.8.3 Upon receipt of Architect's and/or Owner's action, immediately distribute the RFI response to affected parties transmitted via the PMW.
  - 3.2.8.3.1 Architect's action may include a request for additional information, in which case Architect's time for response will date from time of receipt of additional information.
  - 3.2.8.3.2 Notify Architect and Owner within three days if Contractor disagrees with response.
- 3.2.8.4 Notify Architect and Owner within five days if Contractor believes response in RFI involves additional construction cost or time.

### 3.3 CONSTRUCTION PROGRESS DOCUMENTATION

- 3.3.1 Construction Progress Schedule: Two days after award of the Contract, the Contractor shall furnish the Owner with a "Construction Progress Schedule" that indicates the proposed progress with the total number of days agreeing with the "Time for Completion" days listed in the Agreement Between Owner and Contractor.
  - 3.3.1.1 The Construction Progress Schedule shall include delivery and installation dates for all Owner Direct Buy items.
  - 3.3.1.2 All dates in the Construction Progress Schedule must be accepted in writing by both the Owner and the Contractor.



- 3.3.1.3 The Contractor shall begin Work within one week after award of the Contract and progress substantially with the "Construction Progress Schedule" and complete all Work within the time shown thereon, unless delayed by jurisdictional or general strikes beyond the control of the Contractor, Act of God, or national emergency.
- 3.3.2 Submittals Schedule: The Contractor shall provide a submittals schedule with the Construction Progress Schedule arranged in chronological order by dates including time required for review, resubmittal, ordering, manufacturing, fabrication, and delivery.
  - 3.3.2.1 Submittal Checklist: The Contractor shall include the completed Submittal Checklist (Division 00 Section "Submittals Checklist") with the Submittals Schedule.
- 3.3.3 Construction Photographs: Contractor shall take a minimum of ten photographs weekly documenting the construction progress.
  - 3.3.3.1 Upload Construction Photographs to the PMW exactly as originally recorded in the digital camera, without alteration, manipulation, editing, or modifications using image-editing software.
  - 3.3.3.2 Include date and time in file name for each image.
  - 3.3.3.3 When utilizing unmanned aircraft systems (UAS), Contractor must comply with the Kroger Unmanned Aircraft Systems Best Practices Manual and complete the application attached within. Request Manual from Owner.
  - 3.3.3.4 Contractor shall obtain Unmanned Aerial Systems (UAS) Liability Insurance as described in Article 11.
- 3.4 LABOR AND MATERIALS
  - 3.4.1 Unless otherwise specified, all materials and equipment items shall be new. When required by the Owner, the Contractor shall provide certificates of conformance for materials specified.
  - 3.4.2 The Contractor's employees, Subcontractors and other persons carrying out the work shall be properly attired and shall not wear any attire that is deemed inappropriate or offensive to the public or Owner.
  - 3.4.3 Existing Materials: The Owner reserves the right to retain ownership of existing fixtures, equipment, and other items (assets). The Contractor shall remove and handle existing assets deemed sold or retained by Owner in such a manner that will prevent damage and loss including but not limited to safeguarding the assets from theft.
    - 3.4.3.1 Existing Owner assets will not be deemed abandoned unless Owner notifies Contractor of such in writing.
  - 3.4.4 Product Delivery, Storage, and Handling: The Contractor shall deliver, store, and handle products using means and methods that will prevent damage, deterioration, and loss, including but not limited to theft, and shall comply with manufacturer's written

instructions. The Contractor shall provide a secure location and enclosure at Project site for storage of materials and equipment by the Owner's construction forces and shall coordinate location with the Owner.

- 3.4.5 Product Warranties: Warranties specified in the Contract Documents shall not deprive Owner of other rights Owner may have under other provisions of the Contract Documents and shall be in addition to, and run concurrent with, other warranties required by the Contract Documents. Manufacturer's disclaimers and limitations on product warranties do not relieve Contractor of any obligations of the Contract Documents.

3.4.6 Product Selection Procedures:

3.4.6.1 Manufacturer: Where Specifications name a single manufacturer, the Contractor shall provide a product by the named manufacturer that complies with requirements. No substitutions are allowed.

3.4.6.2 Product: Where Specifications name a single product, the Contractor shall provide the named product. No substitutions are allowed.

3.4.6.3 Manufacturers: Where Specifications include a list of manufacturers' names, the Contractor shall provide a product by one of the manufacturers listed that complies with requirements or a substitution approved by the Owner that complies with requirements.

3.4.6.4 Products: Where Specifications include a list of names of both products and manufacturers, the Contractor shall provide one of the products listed that complies with requirements or a substitution approved by the Owner that complies with requirements.

3.4.6.5 Basis-of-Design Product: There are certain "Basis of Design" products listed in the specifications that the Owner has investigated as an appropriate product for the Project. Where Specifications name a product as "Basis-of-Design," provide one of the following:

3.4.6.5.1 The specified product

3.4.6.5.2 A substitution approved by the Owner of a product comparable to the specified product of one of the other named manufacturers. Furnish the proposed product's actual samples, data sheets, and certificates of performance along with the "Basis of Design" product's actual samples, data sheets, and certificates of performance as a comparison.

3.4.6.5.3 A substitution approved by the Owner of a product comparable to the specified product of any manufacturer if no other manufacturers listed. Furnish the proposed product's actual samples, data sheets, and certificates of performance along with the "Basis of Design" product's actual samples, data sheets, and certificates of performance as a comparison.

3.4.6.6 Comply with provisions in Paragraph 3.1 for consideration of an unnamed product by the other named manufacturers or a product by another manufacturer.

3.4.7 Owner's National Account Agreement: Certain material, equipment, and labor costs have been negotiated with the Owner through various suppliers. The Contractor shall utilize these materials, equipment, and labor on the Project and include the National Account Agreement costs for material, equipment, and labor in their Bids. No substitutions are allowed.

3.4.7.1 The Contractor shall provide all other items and labor not included in the National Account Agreement necessary for a complete installation.

### 3.5 TEMPORARY FACILITIES

3.5.1 The Contractor shall provide, at the Contractor's expense, all temporary facilities and utilities (adequate for the Contractor, all Subcontractors, and the Owner's other contractors) from the commencement of the Project until acceptance by the Owner. The Owner shall be the sole judge of the adequacy thereof. Specifically, the Contractor shall provide not less than the following:

3.5.1.1 A temporary building (jobsite trailer), adequately lighted, air conditioned, and heated, for use as a field office. Temporary building (jobsite trailer) may be deleted if approved by Owner.

3.5.1.2 A computer in the field office with a high-speed internet connection to access email and the Owner's PMW and a router (ethernet or wireless) to allow Owner to access the website while Contractor's computer is in use. Include a printer, copier, and scanner.

3.5.1.3 Safety Cabinet: Metal or plastic cabinet of sufficient size to store the following OSHA approved safety gear for Owner and guests at the Project Site. Maintain safety gear in good and clean condition at all times in jobsite trailer.

3.5.1.3.1 Four hard hats.

3.5.1.3.2 Four safety vests.

3.5.1.3.3 Four safety glasses.

3.5.1.4 Temporary waterproof sheds with raised floors for storing materials.

3.5.1.5 Temporary water service with a minimum 1-inch water line available within 50 feet of the building. Temporary water service may be deleted if approved by Owner.

3.5.1.6 Temporary power, 120 volt single phase service.

3.5.1.7 Toilet facilities for all workers at the Project, located where approved by the Owner and complying with local laws, ordinances, rules and regulations. Toilet facilities may be deleted if approved by Owner.

- 3.5.1.8 Minimum temporary heating, cooling, and ventilation and humidity control required by construction activities and material manufacturers' instructions for curing or drying of completed installations, protecting installed construction from adverse effects of low temperatures, providing protection and comfort for installers, and delivering high quality workmanship of all trades throughout the Project. Select equipment that will not have a harmful effect on completed installations or elements being installed. The Contractor may elect to use owners heating and cooling equipment for temporary use if approved in writing by the Owner prior to operating.
- 3.5.1.9 Runways, ladders, guards, etc. leading from lower level to all upper levels and the roof, conveniently serving each level and complying with local laws, ordinances, rules and regulations.
- 3.5.1.10 Temporary Enclosures: When required, provide temporary enclosures for protection of construction, in progress and completed, from exposure, foul weather, other construction operations, and similar activities. Provide temporary weathertight enclosure for building exterior.
  - 3.5.1.10.1 Where heating or cooling is needed and permanent enclosure is not complete, insulate temporary enclosures.
- 3.5.1.11 Temporary Partitions: Provide and install where indicated on Drawings or as indicated by Owner.
- 3.5.1.12 Air-Handling Equipment Protection: The Contractor shall be responsible for protecting the air handling equipment and any associated ductwork from physical damage and infiltration of dust and dirt into the system. The Contractor shall also be responsible for replacing dirty air filters during the course of construction and providing new air filters in units at the time of the building turnover.
- 3.5.1.13 Temporary roadways, staging areas, and construction parking with positive drainage carrying water away from these areas, when the Contractor is responsible for the sitework. All temporary roadways shall be suitable to support all construction vehicles, tractor-trailers, and construction equipment from the public road access to the building, staging area, and construction personnel parking.
- 3.5.1.14 Waste-collection containers (dumpsters) in sizes adequate to handle waste from construction operations and complying with requirements of authorities having jurisdiction.
- 3.5.2 Construction Sign: The Owner may elect to install a construction sign on the Project Site at the Owner's option. If the Owner does not elect to install a construction sign on the Project Site, the Contractor may install a construction sign on the Project Site at the Contractor's option meeting the following criteria:
  - 3.5.2.1 Shall be 4-feet by 8-feet, or size as directed by Owner or local jurisdiction.

- 3.5.2.2 Sign graphics shall contain the Owner's name (most prominent), Project name, General Contractor's name, Architect's name and Architect's consultants' names.
- 3.5.2.3 Constructed of painted plywood or vinyl membrane similar to banner sign material, and securely fastened to plywood.
- 3.5.2.4 Shall be adequately supported and braced as required.
- 3.5.2.5 Top of sign shall be eight feet above grade, with the four feet board dimension vertical or as required by local authority having jurisdiction.
- 3.5.2.6 May be reused as long as they appear to be in good condition as determined by the Owner.
- 3.5.2.7 Must be maintained in good condition through the duration of the Project.
- 3.5.2.8 Shall be submitted and approved by the Owner and the Architect prior to ordering.
- 3.5.2.9 Shall be constructed and installed at Contractor's expense.
- 3.5.3 The Contractor shall pay for all water, power, fuel, etc. used during the execution of the Project, whether from temporary or permanent facilities. Before acceptance of the Project by the Owner, the Contractor shall remove all temporary utilities and restore to pre-existing conditions any area disturbed by the same.
- 3.5.4 All damage to the building, streets, sidewalks, lawns or other features of the site resulting from any operation connected with any of the Work shall be repaired by Contractor at its expense and to the satisfaction of the Owner.
- 3.5.5 Environmental Protection: The Contractor shall provide protection, operate temporary facilities, and conduct construction in ways and by methods that comply with environmental regulations and that minimize possible air, waterway, and subsoil contamination or pollution, or other undesirable effects. The Contractor shall avoid using tools and equipment that produce harmful noise and shall restrict use of noisemaking tools and equipment to hours that will minimize complaints from persons or firms near the Project site.
- 3.5.6 Storm Water Control: The Contractor shall operate temporary construction facilities in compliance with all federal, state, and local authorities having jurisdiction over the Project. The Contractor shall comply with the Contract Documents and the Owner's Storm Water Pollution Prevention Plan (SWPPP).
  - 3.5.6.1 The Contractor shall provide positive flowing temporary drainage conducting storm water away from the building and all temporary and permanent roadways, parking lots, and storage areas.
- 3.5.7 Security Enclosure and Lockup: The Contractor shall install substantial temporary enclosures around partially completed areas of construction as indicated on the Drawings or as required by local authorities having jurisdiction including securing all openings in

the building. The Contractor shall provide lockable entrances to prevent unauthorized entrance, vandalism, theft, and similar violations of security.

**3.5.8 Temporary Fencing and Screening:**

**3.5.8.1 Fencing:** The Contractor shall furnish and install in locations as indicated on the Drawings, galvanized-steel, chain-link fabric fencing, minimum **6 feet (1.8 m)** high with galvanized-steel pipe posts and top rail, and tension wire. The Contractor shall provide bases, bracing, and reinforcement to support posts and to prevent turnover by wind.

**3.5.8.2 Screening:** The Contractor shall furnish and install on fencing in locations as indicated on the Drawings, knitted HDPE high density green polyethylene screening full height of fence. The Contractor shall install screening in locations as indicated on the Drawings to screen unsightly exterior demolition and construction areas.

**3.5.9 Building Security:** For projects not currently under operation by the Owner, the Contractor shall be responsible to lock up and secure the building or building addition at the end of each workday until the building is substantially complete as described in Article 8.2. Upon Substantial Completion, the Contractor may submit a written request to transfer the responsibility of the building security to the Owner or Owner's appointed contractor.

**3.5.10 Barricades, Warning Signs, and Lights:** The Contractor shall comply with standards and code requirements for erecting structurally adequate barricades.

**3.5.11 Temporary Fire Protection:** Until fire-protection needs are supplied by permanent facilities, the Contractor shall install and maintain temporary fire-protection facilities of types needed to protect against reasonably predictable and controllable fire losses. The Contractor shall comply with NFPA 10 "Standard for Portable Fire Extinguishers" and NFPA 241 "Standard for Safeguarding Construction, Alterations, and Demolition Operations," as well as all OSHA requirements.

**3.5.12 Termination and Removal:** The Contractor shall remove each temporary facility when need for its service has ended, when it has been replaced by authorized use of a permanent facility, or no later than Substantial Completion, and restore to pre-existing conditions any area disturbed by the same.

**3.6 LAYOUT AND VERIFYING MEASUREMENTS**

**3.6.1 Verification:** Before proceeding to lay out the Work, the Contractor shall verify layout information shown on Drawings, in relation to the property survey and existing benchmarks. If discrepancies are discovered, the Owner shall be notified promptly. The Contractor shall engage a land surveyor or professional engineer to lay out the Work using accepted surveying practices.

**3.6.2 Field Measurements:** The Contractor shall take field measurements as required to fit the Work properly and shall verify space requirements and dimensions of items shown diagrammatically on Drawings.

3.6.3 The Contractor shall lay out the exact location of all partitions.

3.6.4 The Contractor shall provide and maintain well-built, adequate batter boards at all corners.

### 3.7 EXECUTION REQUIREMENTS

#### 3.7.1 Existing Conditions:

3.7.1.1 The existence and location of site improvements, utilities, and other construction indicated as existing are not guaranteed. Before beginning work, the Contractor shall investigate and verify the existence and location of mechanical and electrical systems and other construction affecting the Work. Before construction, the Contractor shall verify the location and points of connection of utility services.

3.7.1.2 The Contractor shall not interrupt utilities serving facilities occupied by the Owner (if any) or adjacent owners unless approved by the Owner and then only after arranging to provide temporary utility services according to requirements indicated. The Contractor shall notify the Owner not less than two days in advance of proposed utility interruptions.

3.7.2 Examination and Acceptance of Conditions: Before proceeding with each component of the Work, the Contractor shall examine substrates, areas, and conditions, with installer or applicator present where indicated, for compliance with requirements for installation tolerances and other conditions affecting performance. The Contractor shall record observations and immediately report any condition detrimental to performance of the Work. The Contractor shall proceed with installation only after unsatisfactory conditions have been corrected. Proceeding with the Work indicates acceptance of surfaces and conditions.

3.7.3 Installation: The Contractor shall locate the Work and components of the Work accurately, in correct alignment and elevation, as indicated.

3.7.3.1 The Contractor shall comply with manufacturer's written instructions and recommendations for installing products in applications indicated.

3.7.4 Anchors and Fasteners: The Contractor shall provide anchors and fasteners as required to anchor each component securely in place, accurately located and aligned with other portions of the Work.

3.7.5 Starting And Adjusting: The Contractor shall start equipment and operating components to confirm proper operation. Malfunctioning units shall be removed, replaced with new units, and retested. The Contractor shall adjust operating components for proper operation without binding and shall adjust equipment for proper operation. Each piece of equipment shall be tested by the Contractor to verify proper operation including controls and safeties. The Contractor shall replace damaged and malfunctioning controls and equipment.

3.7.6 Correction Of The Work: The Contractor shall repair or remove and replace defective construction and restore damaged substrates and finishes.

**3.8 WARRANTY**

3.8.1 No payments made to the Contractor, nor partial or entire use of the Project by the Owner, shall be an acceptance of any work not done or made in accordance with the Agreement. The Contractor shall furnish a written warranty of all work done under the Agreement for a period of one year or as otherwise provided for longer or shorter periods of time. Such warranty shall be in the form prescribed by the Owner. The Contractor shall also furnish to the Owner all manufacturers' warranties for all equipment, appliances and fixtures specified or required and installed as a part of the Project. The Contractor, at its sole cost, shall remedy any defects due to faulty materials or workmanship and pay for any damage to other work resulting from such defects and/or the remedying thereof, which shall appear within the warranty period. Neither the foregoing nor any other provision in the Contract Documents, nor the time limit of any special warranty shall limit the Contractor's liability for defects or installations resulting from deliberate or other deviations from the Contract Documents to less than the legal limit of liability under the law of the place of building. The Owner shall give notice of observed defects with reasonable promptness. All warranties and bonds shall be delivered to the Owner before final payment is made.

3.8.2 Fixture and Equipment Installation Warranty: Contractor shall furnish a written special installation warranty for the following fixture and equipment installations when they are part of the Contractor's Contract. Warranty requirements and periods shall be as specified in Division 11 Sections for fixtures and equipment:

3.8.2.1 General fixture installation.

3.8.2.2 Refrigerated fixture installation.

3.8.2.3 Fixture and equipment plumbing connections.

3.8.2.4 Fixture and equipment condensate drain connections.

3.8.2.5 Refrigeration system installation.

3.8.2.6 Refrigeration controls installation.

3.8.2.7 Fixture and equipment electrical installation.

3.8.3

**3.9 PERMITS, FEES, LAWS, ORDINANCES, RULES AND REGULATIONS**

3.9.1 The Owner shall secure and pay for the Building Permit and any other fees including but not limited to tap fees, impact fees, or special development fees. The Owner may elect to have the Contractor secure and pay for these permits and fees, on the Owners behalf, the cost of which will be passed on to the Owner without Contractor's mark-up.

3.9.2 The Owner shall secure and pay for permits, fees, licenses, and inspections by government agencies for work performed by the Owner.



- 3.9.3 The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work performed by the Contractor or the Contractor's Subcontractors. The Contractor shall also secure and pay for all certificates of inspection and occupancy in connection with the Work. The Contractor shall post all bonds, secure and pay for all permits, and pay all fees for work on or in connection with public property.
- 3.9.4 The Contractor shall comply with all laws, ordinances, rules and regulations bearing on the Project. If the Contractor observes that the Contract Documents are at variance therewith, the Contractor shall promptly notify the Owner in writing. If the Contractor furnishes any work that is not in conformance with such laws, ordinances, rules and regulations, and without written notice to the Owner, the Contractor shall bear all costs arising from the correction thereof.
- 3.9.5 The Contractor shall maintain physical conditions and employee performance on the jobsite during the course of construction to conform with all local, state, and federal laws, rules and regulations including those covered by the Occupational Safety and Health Act of 1970.
- 3.9.6 Storm Water Discharge/Pollution Control: The Contractor shall apply for and obtain all permits and certifications required by federal, state, or local authorities having jurisdiction over the Project. All required inspections, reports, sampling, and documentation are the Contractor's responsibility under the laws and regulations of the governing authorities and in coordination with the Contract Documents and the Owner's Storm Water Pollution Prevention Plan (SWPPP). The Contractor acknowledges that government regulations, at a minimum, will apply to any land disturbance greater than one acre or part of a larger overall development. Even if the Contractor is not performing the sitework, the Contractor must comply with all responsibilities under the law and the Agreement.

### 3.10 ALTERNATES

- 3.10.1 Prices submitted by the Contractor shall include all alternates specified in the Contract Documents, as well as expenses, overhead and profit. The Owner may select any or all of the alternatives shown therein in writing. Upon selection thereof the Contract Sum shall be adjusted accordingly. The Contractor shall purchase the materials covered by such alternates from such suppliers, and shall have the work done by such Subcontractors according to the agreed upon schedule.

### 3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES (SUBMITTALS)

- 3.11.1 The Contractor shall prepare and submit submittals in electronic form required by individual Specification Sections and as indicated in Article 16, Submittals and submit via the PMW.
- 3.11.2 The Contractor shall thoroughly review and approve submittals for Owner-supplied and Contractor-supplied items to insure that they match the requirements of the Contract Documents in all aspects including intent and required dimensions.
- 3.11.3 Electronic Copies of Architects Drawings: At Contractor's written request, copies of Architect's CAD files in .dwg, .dxf, or .rvt format may be provided to Contractor for

distribution to Material Suppliers or Subcontractors for development of Shop Drawings, or for the Contractor's own use in connection with Project. The Contractor shall submit company name, address, contact name, phone, and fax numbers on company letterhead, along with a written request for specific sheets required. The Architect will respond with a Waiver of Liability and an invoice for the requested files, both of which must be completed prior to issuance of the computer files. The Contractor should allow three days for processing of the initial request and two days after receipt by Architect of signed waiver and payment for requested files.

- 3.11.4 The Owner and/or the Architect will review and approve or take other action upon the Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents.

### 3.12 USE OF SITE

- 3.12.1 The Contractor shall confine equipment and tools, materials, and the operations of the workmen to limits by law, ordinances, rules, regulations, or directions of the Owner and shall not unreasonably occupy the jobsite with equipment, tools or materials. The Contractor shall abide by and enforce the Owner's instructions regarding signs, advertisements, fires and smoking at the jobsite. In performing interior work, the Contractor shall obtain prior approval from the Owner before using equipment (diesel, gasoline, etc.) or performing any work that may emit or cause potential noxious fumes, strong odors, or excessive dust. It is essential for the Contractor to coordinate work to prevent unnecessary impacts to Owner's employees and customers.
- 3.12.2 The Contractor shall limit use of premises to work in areas indicated. The Contractor shall not disturb portions of site beyond areas in which the Work is indicated and shall keep driveways and entrances serving the premises clear and available to emergency vehicles at all times.
- 3.12.3 Partial Owner Occupancy: The Owner reserves the right to place and install equipment in completed areas of building, before Substantial Completion is achieved. Partial occupancy shall not constitute acceptance of the total Work. The Contractor shall obtain a Certificate of Occupancy from authorities having jurisdiction before Owner occupancy.

### 3.13 ROYALTIES, PATENTS AND COPYRIGHTS

- 3.13.1 Unless otherwise expressly stipulated in the Contract, the Contractor shall pay all royalties and license fees. The Contractor shall be notified of, and defend with counsel acceptable to the Owner, any suit or proceeding brought against the Owner based on the claim that any thing, or part thereof, or any process or method involved in the Project, constitutes an infringement on any patent or an unauthorized use of any copyrighted material. The Contractor shall be given full information and assistance for the defense of such suit or proceeding. The Contractor shall bear all costs thereof. In case it is held in such suit or proceeding that an infringement occurred or if an injunction is issued, the Contractor shall, at the Contractor's own expense, either:

3.13.1.1 Procure for the Owner the right to continue using said thing, part thereof, process or method, or

3.13.1.2 Replace or modify same so as to avoid infringement in a manner acceptable to the Owner and without any expense to the Owner.

### 3.14 SUPERINTENDENT

3.14.1 The Contractor shall provide effective supervision of the Project through a full-time resident superintendent and any necessary assistants. The superintendent shall not be changed during performance of this Agreement without the Owner's written consent, unless such superintendent ceases to be in Contractor's employ. The Superintendent or another person agreed to by the Owner in writing shall be present anytime work is being performed on the Project regardless if the work is being performed by the Contractor or a subcontractor. The superintendent shall represent the Contractor in the Contractor's absence and all directions given to the superintendent shall be as binding as if given to the Contractor. No instructions in conflict with the Contract Documents shall be binding unless confirmed in writing by the Owner.

3.14.2 The Contractor shall submit daily, a complete Daily Work Report signed by the superintendent.

### 3.15 CUTTING AND PATCHING

3.15.1 The Contractor shall do all cutting, fitting and/or patching necessary for the complete installation of the Work. The Contractor shall not endanger any Work by the Contractor's operations. The Contractor shall not cut or alter the Work of any other contractor without the Owner's consent.

3.15.2 The Contractor shall not cut and patch any item in a manner that would change its load-carrying capacity or load-deflection ratio, capacity to perform as intended or that results in increased maintenance or decreased operational life or safety, or reduce the building's aesthetic qualities.

3.15.3 The Contractor shall protect existing construction during cutting and patching to prevent damage and shall provide protection from adverse weather conditions for portions of Project that might be exposed during cutting and patching operations.

### 3.16 CLEANING UP

3.16.1 The Contractor shall at all times maintain the Project in an orderly, workmanlike condition, reasonably clean and free of accumulations of dirt and debris. If the Contractor fails so to maintain the Project, the Owner shall have the right to engage others to do so at the Contractor's expense. The Project shall, in general, be turned over to the Owner in a thoroughly clean and workmanlike condition ready for the Owner's use in every respect.

3.16.2 Progress Cleaning: The Contractor shall clean the Project site and work areas daily, including common areas. The Contractor shall dispose of materials lawfully. During handling and installation, the Contractor shall clean and protect construction in progress and adjoining materials already in place. Protective covering shall be applied by the

Contractor where required and as specified in the Contract Documents to ensure protection from damage or deterioration at Substantial Completion.

- 3.16.3 Waste Disposal: Burying or burning waste materials on-site shall not be permitted. Washing waste materials down sewers or into waterways shall not be permitted. The Contractor shall recycle wastes as noted in Article "Construction Waste Management Payments" and dispose of remaining solid and hazardous waste generated by the Project in compliance with federal, state and local regulations. Compliance with the Contract Documents and the Owner's Storm Water Pollution Prevention Plan will be strictly enforced by the Owner.

### 3.17 INDEMNIFICATION

- 3.17.1 The Contractor shall defend and indemnify the Owner and hold the Owner fully and completely safe and harmless from all loss, claims, suits, damages, fines, penalties, expenses and attorney's fees arising out of bodily injury, sickness, disease or death or damage to or destruction of property arising out of or encountered in connection with the construction of the Project or its use thereafter regardless of whether such injury to or sickness, disease, or death of persons or damage to or destruction of property is due in part or claimed to be due in whole or part to any negligence or active negligence or fault of the Owner or its employees, agents or invitees other than when such injury, sickness, disease, death, damage or destruction has been proven in a court of law to have arisen from the Owner's negligence. The Contractor shall also defend and indemnify the Owner and hold the Owner fully and completely safe and harmless from all loss, claims, suits, damages, expenses and attorney's fees arising out of the recording of any mechanic's lien or the assertion of any stop notice against the Owner, construction lender, tenant or the holder of any master lease. These indemnities survive the completion or earlier termination of the Contract.

## ARTICLE 4 ADMINISTRATION OF THE CONTRACT

### 4.1 CLAIMS FOR DAMAGES

- 4.1.1 Claims by either the Contractor or the Owner for damages caused by any wrongful act or neglect of the other, shall be made in writing within a reasonable time after the first knowledge of such damage.

## ARTICLE 5 SUBCONTRACTORS AND MATERIAL SUPPLIERS

### 5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.1.1 The Owner, in the Owner's sole judgment, shall be entitled to reject any Subcontractor and Material Supplier proposed to perform labor or furnish materials in conjunction with the Project listed in the Trade Proposal. In such an event, the Bid amount may be adjusted by the difference in cost caused by substitution of a new Subcontractor or Material Supplier for the one removed.

5.1.1.1 The names of Subcontractors and Material Suppliers proposed to perform labor or furnish materials in conjunction with the Project are submitted on the Trade Proposal within the time outlined in the Kroger e-sourcing Invitation to Bid.

5.1.2 The Contractor may substitute a different Subcontractor or Material Supplier from any listed in the Trade Proposal and may adjust the Contract Sum, only if approved, in writing, by the Owner.

## **5.2 SUBCONTRACTURAL RELATIONS**

5.2.1 The Contractor shall be as fully responsible for the acts and omissions of the Contractor's Subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons employed directly by the Contractor. Nothing contained in the Contract Documents shall create any direct contractual relation between any Subcontractor and the Owner. Every subcontract shall include provisions whereby the Subcontractor agrees to be bound by the terms of the Contract Documents as far as applicable to the Subcontractor's portion of the Project and to indemnify, defend, and save harmless the Owner from all loss, claims, suits, damages, fines, penalties, expenses and attorney's fees arising out of the labor performed or materials supplied by the Subcontractor for the Project.

## **ARTICLE 6 CONSTRUCTION BY THE OWNER OR BY SEPARATE CONTRACTORS**

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

6.1.1 The Owner reserves the right to let other contracts in connection with this Project. The Contractor shall properly coordinate the Contractor's work with that of the Owner's other contractors. If any part of the Work under this Contract depends, for proper results, upon the work under any other contracts, the failure of the Contractor to report defects shall constitute an acceptance of such other work as fit and proper for coordination with the Work, except as to defects which may develop in such other work after the execution of the Work under the Contract.

6.1.2 Owner Direct Buy Program: Certain material and equipment items are regularly and usually furnished and/or furnished and installed by Owner.

#### **6.1.2.1 Owner Responsibilities:**

6.1.2.1.1 Delivery of Shop Drawings, Product Data, and Samples.

6.1.2.1.2 Delivery of Owner-furnished products; inspection of delivered products; replacement of damaged products.

#### **6.1.2.2 Contractor Responsibilities for Owner Furnished/Contractor Installed Products:**

6.1.2.2.1 Review and approval of all submittals.

6.1.2.2.2 Coordinate delivery dates for all Owner Direct Buy items with the Construction Progress Schedule.

- 6.1.2.2.3 Coordinate any changes in delivery date with the Direct Buy item supplier and notify the Owner in writing.
- 6.1.2.2.4 Resolve warranty claims (prior to store opening) directly with the Direct Buy item supplier.
- 6.1.2.2.5 Receive Owner-furnished products, provide inspection, and notify the Direct Buy item supplier and Owner of missing and/or damaged materials within 48 hours after delivery (20 days for concealed damage)
- 6.1.2.2.6 Provide safe harboring, installation, and removal of any salvage materials.
- 6.1.2.2.7 Provide equipment as necessary for placement of Owner furnished products.
- 6.1.2.2.8 Provide first year of labor warranty.
- 6.1.2.3 Contractor Responsibilities for Owner Furnished/Owner Installed Products:
  - 6.1.2.3.1 Review and approval of all submittals.
  - 6.1.2.3.2 Coordinate delivery dates for all Owner Direct Buy items with the Construction Progress Schedule.
  - 6.1.2.3.3 Coordinate any changes in delivery date with the Direct Buy item supplier and notify the Owner in writing.
  - 6.1.2.3.4 Within two weeks of construction (footings), advise the Owner of the desired install date. Before 30 days from the install date, confirm a final date with the installer. Ensure that the Owner supplied and installed items are not damaged during the construction process.
  - 6.1.2.3.5 Obtain approval of any delivery date changes from Owner and coordinate with the Direct Buy item supplier.
  - 6.1.2.3.6 Resolve warranty claims (prior to store opening) directly with the Direct Buy item supplier.
  - 6.1.2.3.7 Provide safe harboring, installation, and removal of any salvage materials.
  - 6.1.2.3.8 Receive Owner-furnished products, provide inspection, and notify the Direct Buy item supplier and Owner of missing and damaged materials within 48 hours after delivery (20 days for concealed damage).

## 6.2 MUTUAL RESPONSIBILITY

- 6.2.1 If any of the Owner's other contractors and/or any Subcontractor shall make any claim against the Owner for any damage alleged to have been caused by the Contractor, the Contractor agrees to settle such dispute promptly after notice thereof. If such other contractor and/or Subcontractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's own expense with counsel reasonably acceptable to the Owner and, if any judgment against the Owner arises there from, the Contractor shall pay or satisfy it and pay all costs and expenses incurred by the Owner.

## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1 GENERAL**

- 7.1.1 Minor Changes In The Work: The Owner will issue, via the PMW, supplemental instructions authorizing minor changes in the Work, not involving adjustment to the Contract Sum or the Contract time.
- 7.1.2 Change Order Proposal Requests: The Owner may, at any time before completion of the Project, order additions to, deletions from, or alterations in the Work. All terms and conditions of the original contract shall become a part of each Change Order.
- 7.1.2.1 Owner-Initiated Proposal Requests: Before any change is made or work done, the Owner will issue a detailed written description of proposed changes in the Work. Proposal requests issued by the Owner are for information only. The Contractor shall not consider them instructions either to stop Work in progress or to execute the proposed change. Promptly after receipt of such instructions, the Contractor shall submit to the Owner, within 10 days, a proposal with a detailed estimate showing the cost of the proposed change in the Work, including a detailed breakdown of costs for the additional work as well as the credit for the original Work, and a revised schedule showing the extension of time, if any. The revised schedule showing any time extension shall be submitted in writing under separate cover and approved by Owner. The Owner shall promptly notify the Contractor in writing whether the estimate is acceptable and, if it is, in writing authorize the change to be made or Work to be done. The Owner reserves the right to reject any such proposal and to have the work done by others.
- 7.1.2.2 Contractor-Initiated Proposals: If the Contractor contends that it has encountered conditions, changes or occurrences entitling it to a change in the Contract or an adjustment in the contract schedule or price, the Contractor shall propose changes by submitting a written request for a change to the Owner. The proposal shall include a statement outlining reasons for the change and the effect of the change on the Work, the effect of the proposed change on the Contract Sum including a detailed breakdown of costs for the additional work as well as the credit for the original Work, list of quantities of products required or eliminated applicable taxes, delivery charges, equipment rental, and amounts of trade discounts and a revised schedule showing any time extension. The proposal shall be submitted to the Owner within 10 days of the discovery of the condition, changes, or occurrences for review and approval. The failure of the Contractor to provide the written proposal as provided herein within such time

period shall constitute a waiver by the Contractor of any claim for compensation or time extension, notwithstanding any purported knowledge or lack of prejudice of the Owner. This written proposal requirement may not be waived, except explicitly and in writing by the Owner.

7.1.2.3 On Owner's approval of a Change Order Proposal, Owner will issue a Purchase Order for the Work to be performed.

7.1.3 Construction Change Directive: The Contractor shall proceed with the change in the Work when indicated in writing by Owner, for subsequent inclusion in a Change Order. The Contractor shall maintain detailed records on a time and material basis. Upon completion of the change, the Contractor shall submit within 30 days an itemized invoice and supporting documentation necessary to substantiate cost and time adjustments to the Contract. If the change has not been invoiced within 30 days of its completion, the owner will not be obligated to pay for the charge and the failure of the Contractor to provide an invoice as provided herein shall constitute a waiver by the Contractor of any claim for compensation.

## 7.2 DETERMINATION OF COST OR CREDIT

7.2.1 The cost or credit shall be determined by one of the following methods:

7.2.1.1 Work Done by Subcontractor:

7.2.1.1.1 For Added Work: The agreed cost noted in the change order proposal to the Subcontractor of such added Work, plus 15 percent representing the Subcontractor's overhead and profit, plus five 5 percent for the Contractor's overhead and profit. Overhead and profit markup shall not be applied to any incremental bond or insurance costs incurred as a result of the added Work.

7.2.1.1.2 For Deleted Work: The agreed cost of such omitted Work.

7.2.1.2 Work Done by Contractor

7.2.1.2.1 For Added Work: The agreed cost to the Contractor of such added Work, plus 15 percent thereof representing the Contractor's overhead and profit. Overhead and profit markup shall not be applied to any incremental bond or insurance costs incurred as a result of the added Work.

7.2.1.2.2 For Deleted Work: The agreed cost of such omitted Work.

7.2.1.3 By Unit Prices

7.2.1.3.1 For those items where unit prices have been established in the Trade Proposal Form or otherwise agreed upon, these unit prices shall be used.

7.2.2 As used herein "Agreed Cost" shall mean the cost of direct labor, materials, equipment, incremental bonds, insurance, and taxes required under the General Conditions, as



disclosed by Contractor's records, which shall be in form satisfactory to the Owner. Superintendence shall be deemed to be included in "Overhead."

### **7.3 DOCUMENTATION OF COST**

- 7.3.1 The Contractor shall submit, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of all costs associated with the change.
- 7.3.2 The Contractor's books, records, correspondence, accounting procedures related to overhead assessments and any other supporting evidence relating to the Contractor's change order costs shall be open to inspection and subject to audit by the Owner. The audit may include verification that all costs submitted on change orders to the Owner pertained to Subcontractor, Material Supplier or Contractor self-performed costs, including applicable fees, and that credits processed by the Contractor that reduce Subcontractor costs or material vendor costs based on deleted work have been processed as deductive change orders with the Owner.

## **ARTICLE 8 TIME**

### **8.1 DELAYS**

- 8.1.1 In the event the Contractor is delayed in the commencement, progress, or completion of the Work by reasons of: (i) an act or neglect of the Owner or Architect, or of an employee or consultant of either, or of a separate contractor employed by the Owner; (ii) changes ordered in the Work; (iii) casualty without the fault or negligence of Contractor, its agents, Subcontractors or Material Suppliers, such as labor disputes, fire, or unusual delay in deliveries; (iv) natural disaster, such as earthquake, tornado, or flood, not reasonably foreseeable or; (v) civil riot or strike on the Project, the time period provided in Paragraph 3 of the Agreement shall be extended by the Owner's approval of the Contractor's written request for such a reasonable time as the Owner may determine.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **9.1 SUBSTANTIAL COMPLETION**

- 9.1.1 Substantial Completion shall mean completion of any condition set forth by the Owner, and all work required to obtain a temporary Certificate of Occupancy to allow for the installation of fixtures, and stocking of inventory. The date of Substantial Completion of the Work or designated portion thereof is the date certified by the Owner when construction is substantially complete, in accordance with the Contract Documents and when all required occupancy permits, if any have been issued. Substantial completion of the Work shall include, without limitation, the following:
  - 9.1.1.1 Completion of paving and striping of pavement and parking areas.
  - 9.1.1.2 Completion of off and on site improvements
  - 9.1.1.3 Completion of electrical and lighting systems both interior and exterior.

- 9.1.1.4 Completion of building mechanical systems.
- 9.1.1.5 Issuance of a temporary or permanent certificate of occupancy.
- 9.1.1.6 Complete and operating building fire suppression system.
- 9.1.1.7 Complete and operational fire and security alarm systems.
- 9.1.1.8 Completion of building construction with the exception of punch list items.  
Completion of contract work is not considered to be punch list items.

## 9.2 COMPLETION DATES

- 9.2.1 The Project must be completed in accordance with the Project Phasing Plan and/or Project Completion Schedule incorporating the Owner's milestones. It is essential that the Contractor have all Work substantially complete and all mechanical systems fully operational with full accessibility. All site improvements must be fully accessible and substantially complete. The completion of minor punchlist items must be scheduled to be performed in such a manner as not to hinder deliveries or installation process.
- 9.2.2 Liquidated Damages: The Contractor shall be liable to the Owner for Liquidated Damages for the sum stipulated in the Agreement Between Owner and Contractor for each day that the Completion Date is exceeded in the completion of the Project.

## 9.3 OPTION ONE - CONTRACTOR FINANCED

### 9.3.1 Progress Payment

- 9.3.1.1 Contractor Requirement: the Contractor shall submit with their progress payment request, on the forms included in the Contract Documents, the following:

	Monthly Draw		
	Draw 1	Ongoing Progress Draws	Final Draw
General Contractor's Progress Affidavit.	X	X	
Conditional Waiver and Release Upon Progress Payment (Current Draw)	X	X	
Unconditional Waiver and Release Upon Progress Payment for the previous progress payment		X	

- 9.3.1.2 Subcontractor or Material Supplier Requirement: The Contractor shall review for correctness and submit with their progress payment request, on the forms included in the Contract Documents, the following from each Subcontractor and Material Supplier whose contract value is \$20,000.00 or more:

	Monthly Draw		
	Draw 1	Ongoing Progress Draws	Final Draw

Subcontractor's Progress Affidavit	X	X	
Unconditional Waiver and Release Upon Progress Payment for (Current Draw)	X	X	

- 9.3.1.2.1 Electronic documents may be accepted in lieu of originals as specified in Working Form 00 65 20 "Subcontractor's Progress Affidavit."

## 9.3.2 Final Payment

- 9.3.2.1 Contractor Requirement: The Contractor shall submit with the request for final payment, on the forms included in the Contract Documents, the following:

	Monthly Draw		
	Draw 1	Ongoing Progress Draws	Final Draw
General Contractor's Final Affidavit.			X
Unconditional Waiver and Release Upon Progress Payment (Previous Draw)			X
Conditional Waiver and Release Upon Final payment			X
Unconditional Waiver and Release Upon Final Payment (Due within 14 days of receipt of final payment from the Owner)			X

- 9.3.2.2 Subcontractor or Material Supplier Requirements: The Contractor shall review for correctness and submit with their request for final payment, on the forms included in the Contract Documents, the following from each Subcontractor and Material Supplier whose contract value is \$20,000.00 or more:

	Monthly Draw		
	Draw 1	Ongoing Progress Draws	Final Draw
Subcontractor's Final Affidavit			X
Unconditional Waivers and Releases Upon Final Payment			X

- 9.3.3 Owner's Rights: The Owner reserves the right at any time during the Project to require Contractor to provide payment support documentation on any Subcontractor or Material Supplier regardless of the contract value or total cost.

## 9.4 OPTION TWO - LETTER OF CREDIT

### 9.4.1 Progress Payment

- 9.4.1.1 Contractor Requirement: The Contractor shall submit with their progress payment request, on the forms included in the Contract Documents, the following:

	Monthly Draw		
	Draw 1	Ongoing Progress Draws	Final Draw
General Contractor's Progress Affidavit.	X	X	
Unconditional Waiver and Release Upon Progress Payment (previous draw)		X	

- 9.4.1.2 Subcontractor or Material Supplier Requirement: The Contractor shall review for correctness and submit with their progress payment request, on the forms included in the Contract Documents, the following from each Subcontractor and Material Supplier whose contract value is \$20,000.00 or more:

	Monthly Draw		
	Draw 1	Ongoing Progress Draws	Final Draw
Subcontractor's Progress Affidavit	X	X	
Unconditional Waiver and Release Upon Progress Payment (previous draw)		X	

- 9.4.1.2.1 Electronic documents may be accepted in lieu of originals as specified in Working Form 00 65 20 "Subcontractor's Progress Affidavit."

#### 9.4.2 Final Payment

- 9.4.2.1 Contractor Requirement: The Contractor shall submit with the request for final payment, on the forms included in the Contract Documents, the following:

	Monthly Draw		
	Draw 1	Ongoing Progress Draws	Final Draw
General Contractor's Final Affidavit.			X
Unconditional Waiver and Release Upon Progress Payment (Previous Draw)			X
Unconditional Waiver and Release Upon Final Payment (Due within 14 days of receipt of final payment from the Owner)			X

- 9.4.2.2 Subcontractor or Material Supplier Requirements: The Contractor shall review for correctness and submit with their request for final payment, on the forms included in the Contract Documents, the following from each Subcontractor and Material Supplier whose contract value is \$20,000.00 or more:

	Monthly Draw		
	Draw 1	Ongoing Progress Draws	Final Draw
Subcontractor's Final Affidavit			X

Unconditional Waiver and Releases Upon Progress Payment (previous draw)			<b>X</b>
Unconditional Waiver and Releases Upon Final Payment (Due within 14 days of receipt of final payment from the Owner)			<b>X</b>

9.4.3 **Owner's Rights:** The Owner reserves the right at any time during the Project to require Contractor to provide payment support documentation on any Subcontractor or Material Supplier regardless of the contract value or total cost.

**9.5 OPTION THREE - PERFORMANCE BOND & LABOR AND MATERIAL PAYMENT BOND**

**9.5.1 Progress Payment**

9.5.1.1 **Contractor Requirement:** The Contractor shall submit with their progress payment request, on the forms included in the Contract Documents, the following:

	<b>Monthly Draw</b>		
	<b>Draw 1</b>	<b>Ongoing Progress Draws</b>	<b>Final Draw</b>
General Contractor's Progress Affidavit.	<b>X</b>	<b>X</b>	
Unconditional Waiver and Release Upon Progress Payment (previous draw)		<b>X</b>	

9.5.1.2 **Subcontractor or Material Supplier Requirement:** The Contractor shall review for correctness and submit with their progress payment request, on the forms included in the Contract Documents, the following from each Subcontractor and Material Supplier whose contract value is \$20,000.00 or more:

	<b>Monthly Draw</b>		
	<b>Draw 1</b>	<b>Ongoing Progress Draws</b>	<b>Final Draw</b>
Subcontractor's Progress Affidavit	<b>X</b>	<b>X</b>	
Unconditional Waiver and Release Upon Progress Payment (previous draw)		<b>X</b>	

9.5.1.2.1 Electronic documents may be accepted in lieu of originals as specified in Working Form 00 65 20 "Subcontractor's Progress Affidavit."

**9.5.2 Final Payment**

9.5.2.1 **Contractor Requirement:** The Contractor shall submit with the request for final payment, on the forms included in the Contract Documents, the following:

	<b>Monthly Draw</b>		
	<b>Draw 1</b>	<b>Ongoing Progress Draws</b>	<b>Final Draw</b>

General Contractor's Final Affidavit.			X
Unconditional Waiver and Release Upon Progress Payment (Previous Draw)			X
Unconditional Waiver and Release Upon Final Payment (Due within 14 days of receipt of final payment from the Owner)			X

- 9.5.2.2 Subcontractor or Material Supplier Requirements: The Contractor shall review for correctness and submit with their request for final payment, on the forms included in the Contract Documents, the following from each Subcontractor and Material Supplier whose contract value is \$20,000.00 or more:

	Monthly Draw		
	Draw 1	Ongoing Progress Draws	Final Draw
Subcontractor's Final Affidavit			X
Unconditional Waiver and Releases Upon Progress Payment (previous draw)			X
Unconditional Waiver and Releases Upon Final Payment (Due within 14 days of receipt of final payment from the Owner)			X

- 9.5.3 Owner's Rights: The Owner reserves the right at any time during the Project to require Contractor to provide payment support documentation on any Subcontractor or Material Supplier regardless of the contract value or total cost.

## 9.6 PAYMENTS WITHHELD

- 9.6.1 The Owner may withhold the whole or any part of any payment to protect against loss on account of:

- 9.6.1.1 Defective materials and/or workmanship.
- 9.6.1.2 Claims filed or evidence reasonably indicating probable filing of claims.
- 9.6.1.3 Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- 9.6.1.4 A reasonable doubt that the Contract can be completed for the balance then unpaid.
- 9.6.1.5 Damage to another contractor.
- 9.6.1.6 Other Contract requirements unfulfilled, including but not limited to those requirements listed in Article "FINAL COMPLETION."

- 9.6.2 Before making any Progress Payments, the Owner may require an updated schedule, Change Order log, and copies of current SWPPP site inspections and logs.

## 9.7 CONSTRUCTION WASTE MANAGEMENT PAYMENTS

- 9.7.1 The Contractor shall, unless directed otherwise by the Owner in the Instruction to Bidders, recycle a minimum of 90 percent of all construction waste generated by the Project. The Contractor shall identify the value associated with construction waste management on the Trade Proposal and Request for Payment forms. Only on the final Request for Payment form shall the Contractor indicate progress or charge for the construction waste management value.
- 9.7.2 Payment for 100 percent of the construction waste management value shall be made upon the Contractor submitting documentation verifying to the Owner's satisfaction that a minimum of 90 percent of all construction waste has been recycled. Should the Contractor not attain 90 percent recycled construction waste, the Owner will compensate the Contractor the percentage of construction waste that was recycled through issuing a deductive change order against the construction waste management value identified on the final Request for Payment.

## 9.8 FINAL COMPLETION/CLOSEOUT PROCEDURES

- 9.8.1 Before requesting final inspection the Contractor shall submit a final Application for Payment. In addition to the forms required by the "Payment" paragraphs above, submit the following:
  - 9.8.1.1 General: Submit in format as specified in Article 16 "Submittals."
  - 9.8.1.2 Final Statement: Updated final statement, accounting for final additional changes to the Contract Sum.
  - 9.8.1.3 Insurance Coverage: Evidence of final, continuing insurance coverage complying with insurance requirements.
  - 9.8.1.4 Warranties: Specific warranties, workmanship bonds, maintenance service agreements, final certifications, and similar documents.
    - 9.8.1.4.1 The Contractor shall submit written warranties for designated portions of the Work where commencement of warranties other than date of Substantial Completion is indicated.
  - 9.8.1.5 Occupancy Releases: Releases permitting the Owner unrestricted use of the Work and access to services and utilities. Include occupancy permits, operating certificates, and similar releases.
  - 9.8.1.6 Startup Testing Records: Record of complete startup testing of systems.
  - 9.8.1.7 Test/Adjust/Balance Records: Record of complete testing, adjusting and balancing of systems.
  - 9.8.1.8 Operation and Maintenance Data: The Contractor shall assemble operation and maintenance data indicating the operation and maintenance of each system, subsystem, and piece of equipment not part of a system. The Contractor shall include operation and maintenance data required in individual specification sections.

- 9.8.1.9 Temporary Facilities: Evidence of termination and removal of temporary facilities from Project site, along with mockups, construction tools, and similar elements.
- 9.8.1.10 Transfer of Utilities: Evidence of transfer of payment and transfer of all utilities.
- 9.8.1.11 Project Record Documents (As-Built): The Contractor shall submit to the Owner one PDF electronic file of scanned red-lined prints of Contract Drawings and Shop Drawings.
- 9.8.1.12 SWPPP Documents: The Contractor shall submit copies of all SWPPP documents including but not limited to inspections reports, site logs, and noted erosion and sediment control plans.
- 9.8.2 If any Subcontractor or Material Supplier refuses to furnish the Contractor with an Unconditional Waiver and Release Upon Final Payment, the Contractor, upon Owner's request, shall furnish the Owner a Discharge of Mechanics Lien Bond, satisfactory to the Owner, indemnifying the Owner against the claim or any lien, or the Owner, at its option, may withhold from the progress or final payment a sum equal to 1-1/2 times the amount of the claim. The Contractor shall purchase the bond without being compensated for the cost of the bond from the Owner. If a lien is filed against the Project at any time and, if within fifteen (15) days after notice of the filing has been given by the Owner to the Contractor, the lien remains unsatisfied or it is not bonded satisfactory to the Owner, the Owner shall thereafter be entitled, regardless of whether the claim is disputed, to pay the full amount of the claim secured by the lien and deduct the cost thereof from the Contract Sum; or if final payment has been made, the Contractor shall promptly reimburse the Owner for the amount so expended. The Contractor shall indemnify, defend, and hold the Owner harmless from all losses, damages and expense, including attorney fees, related to or arising out of the payment claims or liens for work performed or material supplied to the Project.
- 9.8.3 The Contractor agrees to furnish the Owner any reasonable documentation, including, without limitation, payroll records, invoices or canceled checks, which the Owner may request to confirm payment of all indebtedness related to the Project as a condition precedent to any progress payment or final payment. In the event that a Subcontractor or material supplier has not been paid for labor performed or materials furnished in connection with the Project, the Owner, in addition to all remedies available at law or in equity, may pay the Contract Sum due the Contractor by a check made payable to the Contractor and such Subcontractor or Material Supplier and in an amount for which Subcontractor or Material Supplier is due based upon the reasonable judgment of the Owner. Payment by such a joint check shall constitute payment on the Contract Sum.
- 9.8.4 Record of the Contractor's incurred expenses based on self-performed work, and those of their Subcontractors and Material Suppliers, including all fees and direct expenses pertaining to the Project, shall be maintained on the basis of Generally Accepted Accounting Principles (GAAP) and shall be available for inspection by the Owner at all reasonable times and upon reasonable prior notice for a period commencing as of the date of this Agreement and continuing through one year after completion of the Project.



- 9.8.5 Transfer of Utilities: The Contractor shall be responsible for the payment of all utilities during construction, and for providing adequate services as described in the General Conditions. Regardless of the extent of the Owner's equipment and fixture installation process, the transfer of the responsibility for payment of all utilities shall not occur until the construction of the sales and preparation areas are substantially complete and fully operational with only minor punchlist items remaining. At the appropriate time, the Contractor shall submit a request in writing to the Owner requesting the Owner begin the process of transferring all of the utilities into the Owner's name.
- 9.8.6 Demonstration And Training: The Contractor shall instruct the Owner's personnel to adjust, operate, and maintain systems, subsystems, and equipment not part of a system. The Contractor shall schedule training with the Owner at least seven days in advance.
- 9.8.7 Final Cleaning: The Contractor shall conduct final cleaning and waste removal operations just prior to the final completion date indicated in the Contract documents to comply with local laws and ordinances, and federal, state, and local environmental and antipollution regulations.
- 9.8.7.1 Cleaning Agents: The Contractor shall use cleaning materials and agents recommended by manufacturer or fabricator of the surface to be cleaned. The Contractor shall not use cleaning agents that are potentially hazardous to health or property or that might damage finished surfaces.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 PROTECTION OF WORK AND PROPERTY AND RISK OF LOSS**

- 10.1.1 The Contractor shall protect the Work, auxiliary building, structures, materials, supplies, and adjacent property from any damage. The Contractor shall provide safeguards, including but not limited to fire extinguishers and lights, barriers and enclosures around all pits, excavations, and other places of danger.
- 10.1.1.1 If damage results, the Contractor shall repair the damage. If the damage was caused by the Owner, the Owner's other contractors or the Owner's operation, the Owner will pay the Contractor as outlined for additional work in Article 7 of the General Conditions, but if such damage was caused by other persons, the Contractor shall pay for repair of such damage or cause the correction thereof to the Owner's satisfaction.
- 10.1.2 The Contractor shall not trespass upon or in any way disturb adjacent property without first obtaining written permission to do so from the owner of such adjacent property. The Contractor shall restore all disturbed adjacent property to its original condition or such other condition as may be agreed in writing between Contractor and such adjacent owner.
- 10.1.2.1 The Contractor shall indemnify, defend and hold harmless the Owner as well as the owner of such adjacent property from and against any and all claims, costs losses, causes of action, liabilities, damages, suits, judgments, and expenses, including without limitation, reasonable attorneys' fees, resulting from the Contractor's entry upon and/or work within an adjacent property.

10.1.3 The Contractor shall maintain and pay for Builder's Risk Insurance in accordance with Article 11.

## 10.2 TESTS AND INSPECTIONS

10.2.1 The Owner shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide facilities for observation thereof. If the laws, ordinances, rules or regulations of any public authority, the Contract Documents, or the Owner's instructions require any work to be specially tested or approved, the Contractor shall give the Owner notice of its readiness in time to permit the Owner to observe such test or to inspect the same prior to the time for giving such approval.

## ARTICLE 11 INSURANCE AND BONDS

### 11.1 CONTRACTORS' INSURANCE REQUIREMENTS

11.1.1 Certificates of insurance acceptable to the Owner for all Contractor required insurance shall be filed with the Owner prior to commencement of the Work. The Certificate of Insurance must identify all self-insured retentions and/or deductibles to the current ISO general liability policy. Contractor must provide a minimum of 20 calendar days advanced written notice should said insurance be cancelled (voluntarily or otherwise) or expire. In the event of cancellation or expiration of said insurance during the period of time insurance coverage is required under this agreement, Contractor must provide proof of replacement insurance a minimum of 10 calendar days in advance of the effective date of such cancellation or expiration. Failure to provide such proof if insurance will result in payments being withheld by Owner until such time as such proof of replacement insurance is received.

11.1.2 The Owner may require higher insurance coverage limits and/or different coverages for certain product and service providers.

11.1.3 Insurance shall be underwritten by insurance companies rated A- or higher by A.M. Best

11.1.4 The following must be shown as additional wording on Certificates:

11.1.4.1 "The Kroger Co. and Kroger's Affiliates and Subsidiaries are Additional Insureds."

11.1.4.2 "Waiver of Subrogation in favor of the Owner."

11.1.5 Certificate Holder Address: The Kroger Co. and Kroger's affiliates and subsidiaries' mailing address as shown in Division 00 Section "Agreement Between Owner and Contractor."

#### 11.1.6 General Liability

Commercial General Liability	<b>\$3,000,000</b>
Occurrence Basis	<b>Yes</b>
Product Liability / Completed Operations	<b>\$3,000,000</b>
Each Occurrence	<b>\$3,000,000</b>

*Note: General Liability Certificate (and Excess Liability/Umbrella Certificate if one is issued to meet limits) must reflect asbestos abatement coverage, if asbestos abatement is included in scope of work.*

**11.1.7 Auto Liability**

Any Auto	<b>Yes</b>
Combined Single Limit- Bodily Injury and Property Damage	<b>\$1,000,000</b>

*Note: As it concerns "Any Auto", a combination of "All Owned Autos, Hired Autos & Non-Owned Autos" OR "Scheduled Autos, Hired Autos & Non-Owned Autos" is acceptable.*

**11.1.8 Manned Aircraft Liability**

Any Manned Aircraft	<b>Yes</b>
Combined Single Limit - Bodily Injury and Property Damage	<b>\$1,000,000</b>

*Note: As it concerns "Any Manned Aircraft", a combination of "Owned Aircraft, Hired Aircraft & Non-Owned Aircraft" OR "Scheduled Aircraft, Hired Aircraft & Non-Owned Aircraft" is acceptable.*

**11.1.9 Unmanned Aerial Systems (UAS) Liability**

Combined Single Limit - Bodily Injury and Property Damage per Occurrence	<b>\$1,000,000</b>
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*Note: Coverage required if Contractor deploys drones/UAS's relating to services to Kroger.*

**11.1.10 Workers Compensation.**

Statutory Limits	<b>Yes</b>
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**11.1.11 Employers Liability**

Each Accident	<b>\$500,000</b>
Disease Policy Limit	<b>\$500,000</b>
Disease Each Employee	<b>\$500,000</b>

*Note:*

- Required coverage limits can be achieved through a combination of Primary & Excess or Umbrella Liability Insurance.*
- In certain instances, "Claims Made" policies may be acceptable, consult Owner to validate exception.*
- Certificates must be received by Owner prior to the commencement of work;*
- Address of the site must be shown on the Certificate.*

**11.1.12 Pollution Liability**

Each Incident	<b>1,000,000</b>
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**11.1.13 Contacts**

Contact	Contact Title / Company:	Contact Phone:	Contact e-Mail:
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Name:			
Per Contract	Appropriate Kroger Engineering / Construction Department	See Work Order	
Rob Quast	Director of Insurance & Claims - Kroger	1-513-562-5197	<a href="mailto:rob.quast@kroger.com">rob.quast@kroger.com</a>
Bob Stewart	Corporate Insurance - Kroger	1-513-762-4756	<a href="mailto:bob.stewart@kroger.com">bob.stewart@kroger.com</a>

#### 11.1.14 Builder's Risk Insurance

Coverage Limit	<b>\$100,000 coverage limit, \$5,000 deductible</b>
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11.1.14.1 The Contractor shall maintain for a period of at least five days subsequent to the written acceptance by the Owner of the project and pay for Builder's Risk Insurance in a company or companies with AM Best ratings of A- or better satisfactory to the Owner. The Contractor shall file a certificate of insurance naming the Owner as additional insured that must be received and retained in file by the certification of such with Owner. All responsibility for deductibles and other uninsured loss is the responsibility of the Contractor at full replacement value to the limits indicated in the above table. The Owner shall be responsible for claims greater than the limits shown in the above table. The provisions of this Paragraph shall in no way relieve the Contractor of liability for any loss for which the Contractor would otherwise be liable.

11.1.14.2 All risk of loss, damage or theft of Contractor's equipment and tools and any Subcontractor's equipment and tools and any property of either's employees that will not become part of the Project will be at the risk of the Contractor or Subcontractor owning said property.

11.1.14.3 The Contractor shall purchase a Floater Policy covering Owner supplied material and equipment at full replacement value, that upon receipt and acceptance of said material or equipment by the Contractor, shall protect it from theft, vandalism, or damage.

11.1.14.3.1 The Floater Policy may be waived by the Owner if the Contractor provides evidence from their builder's risk insurance carrier by email or letterhead correspondence that Owner provided equipment and supplied materials are covered at full replacement value against theft, vandalism, or damage at the same coverage limits indicated below for the Floater Policy.

11.1.14.3.2 Coverage limits for the Floater Policy shall be as follows:

New Store or Expansion	<b>\$250,000 coverage limit, deductible \$10,000</b>
Within Wall Remodel Project	<b>\$150,000 coverage limit, deductible \$10,000</b>
Strip Centers or Fuel Center	<b>\$50,000 coverage limit, deductible \$5,000</b>

11.1.14.4 The Contractor shall bear risk of glass breakage resulting from vandalism and malicious mischief risks.

11.1.14.5 Deductibles shall be at the sole risk of the Contractor as indicated.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **12.1 WORKMANSHIP**

12.1.1 The workmanship called for by the Contract Documents shall be of the highest quality in every respect, as usually recognized in the building construction industry. All surfaces, members, frames, and units shall be true, even and in alignment. No warped, bent, dented, or otherwise damaged members or units shall be built into the Project. Connectors shall be true, tight and neat. Finishes shall be free from chips, dents and other imperfections. All factory assemblies shall conform to the highest quality standards of the trades concerned.

### **12.2 CORRECTION OF WORK**

12.2.1 Defective materials and/or workmanship will not be acceptable and if installed shall be removed and replaced with sound materials and highest quality workmanship or otherwise corrected to the Owner's satisfaction. The Contractor shall bear all expense of replacement or remedial work and repairs to and alterations in the work of other contractors necessitated by the Contractor's replacement or remedial work. Should the Contractor be unable to replace or remedy the defective work, the Contractor shall promptly remove the entire Work and reimburse the Owner for all money paid therefore.

### **12.3 DEDUCTIONS FOR UNCORRECTED WORK**

12.3.1 If the Owner deems it inexpedient to correct Work damaged or not done in accordance with the Agreement, or incomplete Work not accomplished by the Contractor (such as incomplete punch list items), an equitable deduction from the Contract Sum shall be made, sufficient to pay the cost of later correction thereof.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 GOVERNING LAW**

13.1.1 The Contract shall be governed by the law of the state where the Project is located.

### **13.2 SUCCESSORS AND ASSIGNS**

13.2.1 The Contractor shall not assign the Contractor's right, title or interest in or to the Contract without the prior written consent of the Owner, which may be given or withheld at Owner's sole discretion; nor shall the Contractor assign any monies due or to become due the Contractor hereunder without the prior written consent of the Owner, which may be given or withheld at Owner's sole discretion.

### **13.3 RIGHTS AND REMEDIES**

13.3.1 No action or failure to act by the Owner shall constitute a waiver of a right or remedy afforded the Owner under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach by the Contractor thereunder.

#### 13.4 EQUAL OPPORTUNITY

- 13.4.1 It is the policy of The Kroger Co. that certified Minority-Owned Business Enterprises (MBEs), Women-Owned Business Enterprises (WBEs) and other Diverse-Owned Business Enterprises (e.g., Veteran-Owned Business Enterprises; Service Disabled Veteran-Owned Business Enterprises; Lesbian, Gay, Bisexual & Transgender-Owned Business Enterprises) (DBEs) have the opportunity to participate in the performance of Kroger contracts. In support of the policy, Kroger encourages all our suppliers to provide meaningful contracting and sub-contracting opportunities to M/W/DBEs. Utilization of M/W/DBE suppliers and/or service providers throughout the course of the contract is one of the non-pricing factors that Kroger evaluates during the bid award selection process. Upon request, vendors will be required to track and report their expenditures with diverse-owned companies as it relates to the products and/or services provided to Kroger.
- 13.4.2 The Request for Payment form includes a column for reporting dollars of participation of M/W/DBEs in the Project. At the completion of the Project, the Contractor must provide a list to include M/W/DBE company names, trade or service provided, identification of gender/ethnicity of owner of company, amounts paid.

#### 13.5 QUALITY REQUIREMENTS

- 13.5.1 Quality-control services include inspections, tests, and related actions including reports. Quality-control services are further specified in other portions of the Contract Documents and shall be performed by independent testing agencies provided by the Contractor or Owner, as specified.
- 13.5.2 The Contractor is responsible for coordinating and scheduling inspections and tests with authorities having jurisdiction and the Owner's testing agencies.
- 13.5.2.1 Retesting: The Contractor shall pay for all retesting where results of inspections and tests prove unsatisfactory and indicate noncompliance with requirements.
- 13.5.2.2 Auxiliary Services: The Contractor shall cooperate with agencies performing inspections and tests. The Contractor shall provide auxiliary services as requested. The Contractor shall notify agency in advance of operations requiring tests or inspections, to permit assignment of personnel.
- 13.5.2.3 On completion of testing, inspecting, sample taking, and similar services, the Contractor shall repair damaged construction and restore substrates and finishes.

#### 13.6 ATTORNEYS' FEES

- 13.6.1 In any arbitration or litigation to enforce the terms of the Contract or arising out of the Contract or the performance thereof, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs. This paragraph shall apply to the recovery of reasonable attorneys' fees and costs even if Owner employs its own attorneys to enforce or defend its rights or pursue action hereunder.

### **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**14.1 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

14.1.1 If the Work should be stopped under an order of any court or other public authority, for a period of three months, through no act or fault of the Contractor or of anyone employed by the Contractor, then the Contractor may, upon three days written notice to the Owner, stop the Work without liability for such delay; or the Contractor may terminate the Contract and recover from the Owner payment including a reasonable profit for all Work executed to the time of termination.

**14.2 OWNER'S RIGHT TO TERMINATE CONTRACT**

14.2.1 The Contractor's performance of work under this Agreement shall be terminable for cause upon twenty-four (24) hours' written notice by Owner to Contractor. For purpose of this paragraph, "cause" shall be defined as, and shall include but not limited to, the Contractor: (i) being adjudged a bankrupt, (ii) making a general assignment for the benefit of the Contractor's creditors, (iii) having a receiver appointed on account of the Contractor's insolvency, (iv) persistently or repeatedly refusing or failing, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials to keep the Project on schedule, (v) failing to make prompt payment to Subcontractors or for materials or labor, (vi) persistently disregarding laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or the instructions of the Owner, (vii) otherwise violating a provision of this Agreement, or (viii) failing to provide or maintain the insurance required herein. If Owner terminates the employment of the Contractor, as aforesaid, Owner shall be entitled to take possession of the premises and all materials, tools and appliances thereon and finish the Project by whatever method the Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment. If the expense of finishing the Project, including compensation for the Owner's additional services, shall exceed such unpaid balance of the contract sum, then the Contractor shall promptly pay such excess to the Owner. Owner reserves the right to use the Contract sum to make such payment directly to Subcontractors and/or workmen or other persons who have provided work or materials to the Project, on the Contractor's behalf.

**ARTICLE 15 CLAIMS AND DISPUTES**

**15.1 DISPUTE RESOLUTION**

15.1.1 Contractor and Owner covenant and agree in event of any claim, dispute or other matter in questions arising out of or relating to the Contract Documents or breach thereof ("Dispute(s)"), Contractor and Owner shall continue to perform, except to the extent performance is otherwise excused pursuant to the Contract Documents, all obligations as required under the Contract notwithstanding the existence of such Dispute(s) and that either party may seek such relief as may be permitted in accordance with the following terms and conditions:

15.1.1.1 Contractor and Owner agree to negotiate in good faith, in an attempt to resolve any dispute(s) for a period of at least thirty (30) days following the receipt of a written notice from either party to the other which shall set forth, in specifics, the nature and description of the Dispute(s) the actions or inactions of the other

party which caused the Dispute(s), and the relief or remedy requested by the notifying party;

- 15.1.1.2 Should the Contractor and the Owner be unable to resolve the Dispute(s) through good faith negotiation, the Contractor and the Owner agree to attempt in good faith to resolve said Dispute(s) through mediation administered by an organization offering commercial mediation services acceptable to the Owner as a condition precedent to dispute resolution and/or litigation herein provided. All mediation procedures shall be conducted in at a location selected by the Owner in the state where the Project is located;
- 15.1.1.3 Should the Contractor and the Owner be unable to resolve said Dispute(s) through mediations, any and all Dispute(s) shall, at the sole discretion of the Owner, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining, which election shall be made by the Owner within a reasonable period of time. The organization providing arbitration services, which is acceptable to the Owner, and any arbitrator(s) appointed thereby shall have no jurisdiction, power or authority to decide or award punitive damages. The award(s) rendered by the arbitrators in accordance with this provision shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. All arbitration proceedings or hearings shall be conducted at a location selected by the Owner in the state where the Project is located, utilizing such state's laws;
- 15.1.1.4 The Owner may join any other party in the arbitration proceedings that the Owner determines is necessary to reach a complete adjudication of all Disputes arising under the terms of the Contract, and/or Disputes arising under the terms of any other agreement or contract entered into between the Owner and any other party performing work on the Project, so long as such other Disputes arise out of the same core of operative facts;
- 15.1.1.5 All Dispute(s) not resolved by arbitration pursuant to the terms of Subparagraph 15.1.1.3 will be resolved by litigation in any state or federal court located in the state where the Project is located, utilizing such state's laws, after compliance with Subparagraphs 15.1.1.1 and 15.1.1.2 hereof; and
- 15.1.1.6 The failure of either the Contractor or the Owner to comply with the provisions of this Paragraph 15.1 shall be in contravention of the parties expressed intention to implement this alternative means of Dispute resolution and shall constitute a breach of these provisions. The Contractor and the Owner expressly stipulate that any court having jurisdiction over the parties shall be empowered to immediately enjoin any proceeding commenced in contravention of these provisions and the party failing to comply with these provisions shall reimburse the other party for all costs and expenses (including attorneys' fees) incurred in enforcing these provisions.

## **ARTICLE 16 SUBMITTALS**

### **16.1 GENERAL**



16.1.1 Contractor shall prepare and submit submittals in electronic data file format on the Owner's PMW.

**16.2 SUBMITTAL PROCEDURE:**

16.2.1 Submittal Administrative Requirements: The Contractor shall coordinate preparation and processing of submittals with performance of construction activities.

16.2.1.1 Coordination: The Contractor shall coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity. The Contractor shall submit all submittal items required for each Specification Section concurrently unless partial submittals for portions of the Work are indicated on approved submittal schedule. The Contractor shall coordinate transmittal of different types of submittals for related parts of the Work so processing will not be delayed because of need to review submittals concurrently for coordination.

16.2.1.2 Processing Time: The Contractor shall allow 10 days for review of each submittal or each resubmittal by the Owner and/or Architect beginning at the time of receipt by the Owner and/or Architect. The Contractor shall allow additional time if coordination with subsequent submittals is required. Owner and/or Architect will advise Contractor when a submittal being processed must be delayed for coordination. No extension of the Contract Time will be authorized because of failure to transmit submittals enough in advance of the Work to permit processing, including resubmittals.

16.2.1.3 Identification and Information: The Contractor shall identify and incorporate information in each electronic submittal file as follows:

16.2.1.3.1 Assemble complete submittal package into a single indexed file with links enabling navigation to each item.

16.2.1.3.2 Name file with submittal number or other unique identifier, including revision identifier.

16.2.1.3.2.1 File name shall use project identifier and Specification Section number followed by a decimal point and then a sequential number (e.g., LNHS-061000.01). Resubmittals shall include an alphabetic suffix after another decimal point (e.g., LNHS-061000.01.A).

16.2.1.3.2.2 Provide means for insertion to permanently record Contractor's review and approval markings and action taken by Owner and/or Architect.

16.2.2 Direct Buy Submittals: The Owner will provide submittals for Direct Buy Owner purchased items , when requested by the Contractor, for the Contractor's information as indicated in individual specification sections.

16.2.3 Submittal Procedure Requirements: The Contractor shall prepare and submit submittals required by individual Specification Sections marked "For Approval." Types of submittals are indicated in individual Specification Sections.

16.2.3.1 Electronic Submittals: The Contractor shall post electronic submittals as PDF electronic files directly to Owner's PMW.

16.2.3.1.1 Owner and/or Architect will return annotated file. The Contractor shall annotate and retain one copy of file as an electronic Project record document file.

16.2.4 Contractor's Review: The Contractor shall review each submittal and check for compliance with the Contract Documents. The Contractor shall note corrections and field dimensions. The Contractor shall mark with approval stamp before submitting to the Owner and the Architect.

16.2.5 Owner's and/or Architect's Action:

16.2.5.1 General: The Owner and/or Architect will not review submittals that do not bear Contractor's approval status and will return them without action.

16.2.5.2 The Owner and/or Architect will review each submittal, make marks to indicate corrections or modifications required, and return it.

16.2.5.3 Incomplete submittals are not acceptable, will be considered nonresponsive, and will be returned without review.

16.2.5.4 Submittals not required by the Contract Documents or not identified with review responsibility in the Submittals List may not be reviewed and may be discarded.

16.2.5.5 Where items deviating from the Specifications and/or Drawings have been approved by the Owner, submittals for these substituted items shall be submitted to the Owner and/or the Architect for approval before fabrication.

### 16.3 SUBMITTAL CHECKLIST

16.3.1 Refer to Division 00 Section "Submittal Checklist."

END OF SECTION 00 72 14