

1. Page 3 of the agreement, article 5.1.3- third line”..., unless extenuating circumstances exist which would preclude approval of payment within 30 days.” Can you provide us a list of what would be considered extenuating circumstances? Would those be a result of something the General Contractor did or didn’t do?

That language is derived from the Fairness in Public Construction Contract Act, K.S.A. 16-1901, et seq. (see K.S.A. 16-1903(c)). The act does not itself identify what would be considered extenuating circumstances. Whether such circumstances exist would be a case by case determination. It could be something the General Contractor did or did not do, but would be more likely some intervening event beyond the control of the parties, for example, an ice storm that disrupts the processing of the payment.

2. Page 11 of the General Conditions Article 1.2.3.4- last sentence, “The contractor shall provide all work thus indicated or reasonable inferred as necessary to produce intended results of complete, structurally sound, aesthetically desirable, durable, properly performing work of quality.” We are the General Contractor, we are not responsible for design, and whether the design is aesthetically desirable, durable or structurally sound. We will build the project per plans and specifications, but are not responsible for design.

The terms of the contract are standard contract terms used by Sedgwick County and are the same as the terms of the contract used for Phase I. The contract language will not be modified in response to this comment and Sedgwick County does not accept the statements made as part of the contract between the County and the successful bidder.

3. Page 12 of the agreement, article 1.5.2.1- References unforeseen conditions. We should have no responsibility for unforeseen conditions, we are basing our bid on the documents that have been issued for bid, those include soils reports, contract drawings and specifications, and we cannot be responsible for items not shown in those documents.

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4. Page 15 of the agreement- article 3.2.1.1- “The exactness of grades, elevations, dimensions, or locations given in any drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect, or the Owner.” We are the General Contractor, we are not responsible for design, and we are relying on the information provided in the bid documents to bid the project, if the items are not correct and that is determined by us, resulting in a change in the scope of work, the cost and time associated will be handled via change order.

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5. Page 24 of the agreement- article 3.18.3- second and third line, “...without limitation, all fines, penalties, damages, liability, costs, expenses (including without limitation reasonable attorney’s fees) and Punitive damages (if any) arising.... We would like them to strike the Punitive damages.

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6. Page 26 of the agreement- article 4.3.4 the added clause at the bottom- “Add the following at the end: No adjustment in the Contract Time or Contract Sum shall be permitted however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should be disclosed...” This is very confusing what I think it says again is that we are responsible for concealed or unforeseen conditions as long as they don’t differ materially from those shown. If that is the case again we are bidding the documents and will be contracting for the documents, anything above or different then the documents would be considered a changed condition and result in a change order.

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7. Page 27 of the agreement, article 4.3.7.2 the second added paragraph- ‘The Contractor agrees that the delays due to adverse weather conditions will be allowed on a tentative basis only in that a final determination will be reserved until the work is substantially complete and in allowing such extensions the owner may consider both beneficial and adverse weather conditions prevailing throughout the entire contract time period and in no case will a total of more than (30) calendar days be permitted for the total construction period and no increase in contract sum will be made.’ Please provide clarification, what is considered a beneficial weather condition? What is considered an Adverse Weather Condition? Why is there a cap of 30 days? What if there are more than 60 days or 120 days lost. No one can predict the weather, if there are a certain number of days that should be counted as potential lost days due to weather please provide that, the Contractor should not be responsible for delays which are out of the Contractors control, thus weather delays.

The terms of the contract are standard contract terms used by Sedgwick County and are the same as the terms of the contract used for Phase I. The terms used, "beneficial weather condition" and "adverse weather condition," in the County's opinion, are self-explanatory. The County believes it is sufficient to allow for up to, but no more than, 30 calendar days for weather delays for the total construction period.

8. Page 27 of the agreement, article 4.3.10 has been deleted in its entirety. Please add this article back.

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9. Page 33- Article 7.1.3- last sentence, "other than a minor change..." Please define minor change.

The phrase quoted is part of the standard AIA language for the A201 contract. The A201 also includes the following discussion of "minor changes" which explains what is meant by the term:

§ 7.4 MINOR CHANGES IN THE WORK

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

10. Page 35 of the agreement article 7.3.10- fourth sentence, "..., and other expenses, excluding bond and insurance..." Bond cost and insurance costs

are based on the overall contract amount, if the contract amount increases as should the costs of the bond and insurance. Please remove the work “excluding”.

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11. Page 35, article 8.1.6- “Contractor covenants and agrees that the time for completion is a reasonable time, taking into consideration average weather and other usual conditions as well as lead times for receiving equipment and materials.” Please define average weather.

The terms of the contract are standard contract terms used by Sedgwick County and are the same as the terms of the contract used for Phase I. The term used, “average weather,” in the County’s opinion, is self-explanatory.

12. Page 36- article 8.3.1 last sentence in the added paragraph, “The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such a delay (i) is not caused, or could have been anticipated, by the contractor, (ii) could not be limited or avoided by the Contractor’s timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than (1) day. Please delete the entire paragraph after the word delay. So delete, “(i) is not caused, or could have been anticipated.... All the way to the end of the paragraph”.

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13. Page 39- article 9.5.1 paragraph 8. reasons for withholding certification of pay application. “Contractors failure to obtain necessary permits, or license or to comply with applicable codes, regulations, or other laws.” Please delete portion of sentence, “...necessary permits...” The plans are to be submitted by the Architect, the Architect is responsible for responding to any concerns the permit reviewer may have, it is the Architects responsibility to promptly respond and resolve any permit issues, prior to the permit being issued.

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