

ADDENDUM #2

RENOVATIONS FOR ENGINEERING LAB

CUMBERLAND COUNTY COLLEGE
3322 COLLEGE DRIVE, VINELAND, NJ 08360

FOR:

Cumberland County Improvement Authority
745 Lebanon Road
Millville, NJ 08332

ARCHITECT

Manders Merighi Portadin Farrell Architects, LLC
1138 East Chestnut Avenue #4
Vineland, NJ 08360

MECHANICAL/PLUMBING/ELECTRICAL ENGINEER

BCCLT Consulting Engineers
1138 East Chestnut Street
Vineland, NJ 08360

April 9, 2019

ADDENDUM #2

Date: April 9, 2019
To: All Bidders
From: Ron Portadin, AIA
Project #: 19002
Reference: Renovations to Engineering Lab – CCC

Please be advised of the new dates/times for the project, which supersede those listed previously:

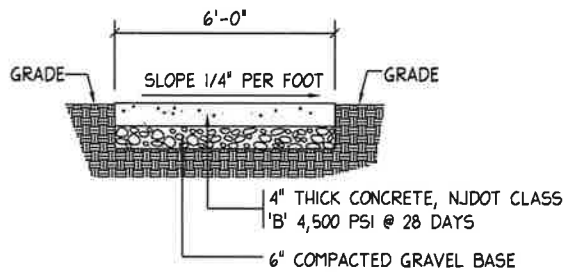
Deadline for questions	4:00 PM, Friday, April 19, 2019
Bids Due and opened	1:00 PM, Wednesday, May 29, 2019 CCIA Administration Building 745 Lebanon Road Millville, NJ 08332
Anticipated Notice to Proceed (verbal)	Wednesday, July 24, 2019
Anticipated Notice to Proceed (formal)	Tuesday, August 6, 2019
Construction Start	Thursday, July 25, 2019
Construction Complete	Friday, December 13, 2019

1. Who is the fire alarm vendor for this building?
Fire alarm vendor for the campus is Honeywell; there is a campus wide system that is interconnected.
2. On Drawings E1.0 and E3.0, what is the symbol R in a box represent? In corridor #1 and Storage 113.
Symbol R indicates the relay for emergency lighting. Relay shall be UL924 listed.
3. On Drawing E1.0, the four receptacles in what appear to be lab tables (LPS-33); are they feed overhead or piped into the slab?
Provide 20a, 208/120v, 3ph receptacle to serve item #1. Install receptacle on wall south west corner in room 105. Run circuit to panel LPC. Provide 20a/3p breaker in Panel. Circuit shall be 4#12, 1#12g, 1" conduit
4. On Drawing E1.0 symbol 1 Power Distribution Learning Center does not have feed. Again, is this an overhead drop or in the deck?
There is a cord and plug unit. This will be plugged into the wall receptacle. Additional power is not required.
5. During the site visit it was observed that there has been demo/damage done to the electrical system, how will this be addressed? If all the alternated are taken, this might not be an issue but if not, there could be some extensive repairs required to make everything safe.
We are not aware of any damage to the existing electrical systems. It is the contractor's responsibility to remove any existing devices, feeders, conduit, wiring, panels, etc. to install the new work.

ADDENDUM #2

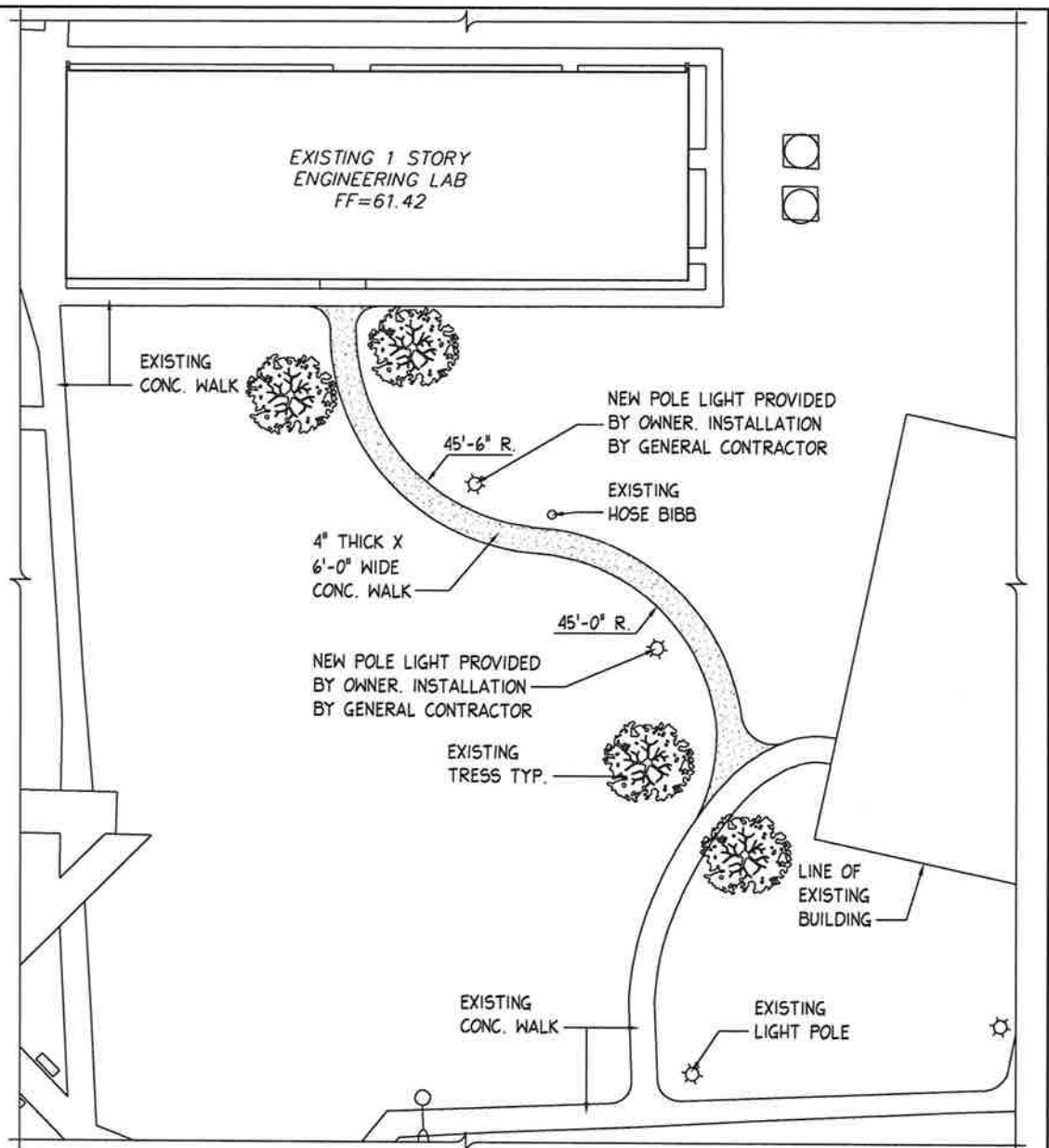
Date: April 9, 2019
Page 2

6. What is the completion time and the liquidated damages?
See revised project schedule above; liquidated damages are \$500.00/day, as indicated in sample document A132; Section 8.6 (attached).
7. What are the insurance requirements?
Insurance limits are in A232, Section 11.1 – General Insurance Requirements (attached).
8. Enlarged Toilet Room Plans
Drawing A1.1 incorrectly indicate Enlarged Toilet Room Plans are on Drawing A1.12; these plans are on Drawing A1.10. There is no Drawing A1.12
9. Steel Angles
In area of rated ceiling (Corridor #1 – Base Bid and Corridor #2 – Alternate #2) existing steel angles supporting crane rails are to be cut flush with existing metal ceiling panels to allow for installation of GWB. In all other areas, angles may remain.
10. Site Work
General Contractor to include in the Base Bid a 6' wide concrete walk and two (2) light poles as shown on the attached Drawing SP-1, overall length of walk is approximately 156'. Fixtures and poles provided by Owner and installed by General Contractor; see attached installation details for additional information. Provide ground rod and connect to light pole with #4 conductor. Connect lights to Square D power link panel in Nursing Building. Contractor shall provide program of the Square D panel.



CONC. SIDEWALK DETAIL

SCALE: N.T.S.



SITE

SCALE: N.T.S.



David G. Manders AIA AI-07220
 Lawrence J. Merighi AIA AI-07473
 Ronald P. Portadin AIA AI-13038
 Peter W. Farrell AIA AI-13618

Manders Merighi Portadin Farrell Architects, LLC
 1138 East Chestnut Avenue | Vineland, New Jersey 08360
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Project RENOVATIONS TO:
ENGINEERING LAB
 CUMBERLAND COUNTY COLLEGE
 3322 COLLEGE DR. VINELAND, NJ 08360

Drawing
 PARTIAL SITE PLAN

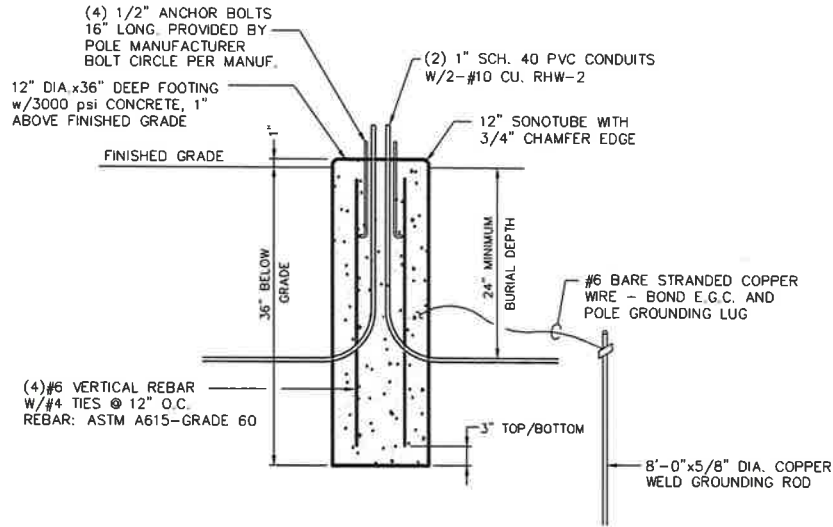
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Job
 19002
 Date
 04/01/19

Sheet
SP-1
 1 of 1

POLE SPECIFICATIONS:

1. SPAULDING SERIES - PT
2. ROUND TAPERED ALUMINUM
3. 6" SHAFT SIZE
4. 0.188" WALL THICKNESS
5. POLE HEIGHT SHALL MATCH EXISTING LAMPS ON CAMPUS CURRENTLY APPROXIMATELY 10-FT HIGH.
6. 3-HOLE ANCHOR BASE WELDED TO POLE
7. DARK BRONZE FINISH - POWDER COAT
8. APPROVED EQUAL SHOULD MEET OR EXCEED STANDARDS ABOVE.
9. POLE AND BASE w/COVER ARE INTERGRALLY CONNECTED AT PLANT.

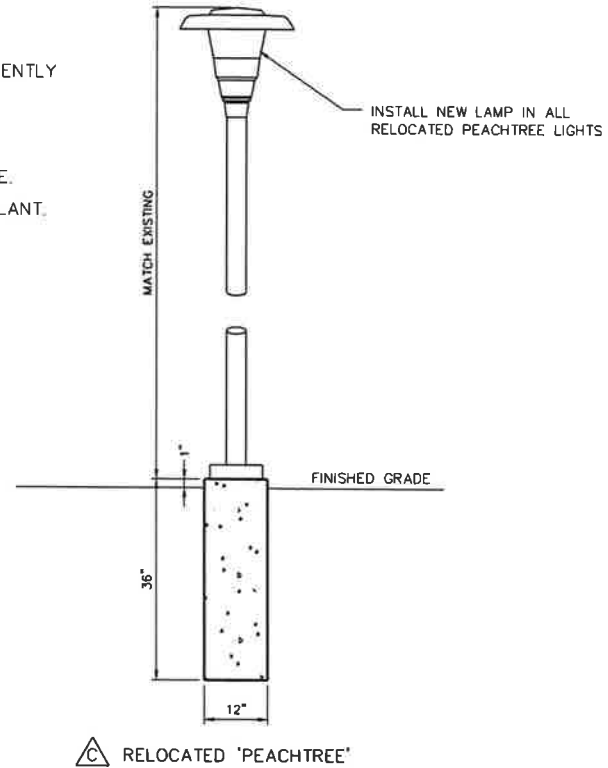


'PEACHTREE' FOOTING DETAIL

N.T.S.

'COBRA HEAD' POLE DETAIL

N.T.S.



'PEACHTREE' POLE DETAIL

N.T.S.

AIA[®] Document A132[™] – 2009

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the ____ day of _____ in the year 2019
(In words, indicate day, month and year.)

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

County of Cumberland, New Jersey
164 W. Broad Street
Bridgeton, NJ 08302

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

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

Renovations for New Engineering Lab

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

Cumberland County Improvement Authority
745 Lebanon Road
Millville, New Jersey 08332

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

Manders Merighi Portadin Farrell Architects, LLC
1138 East Chestnut Avenue #4
Vineland, NJ 08360

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A232[™]–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132[™]–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. ^AIA Document A232[™]–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the entire Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

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

Date to be fixed by Notice to Proceed

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanics' liens and other security interests, the Owner's time requirement shall be as follows:

N/A

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

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than () days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Substantial Completion shall be on or before _____, 2019

Portion of the Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Liquidated Damages apply, see Section 8.6.1.

ARTICLE 4 CONTRACT SUM

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

- Stipulated Sum, in accordance with Section 4.2 below
- Cost of the Work plus the Contractor's Fee without a Guaranteed Maximum Price, in accordance with Section 4.3 below
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below. Based on the selection above, also complete either Section 5.1.4, 5.1.5 or 5.1.6 below.)

§ 4.2 Stipulated Sum

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

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

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

§ 4.2.3 Unit prices, if any:

(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 4.2.4 Allowances included in the Stipulated Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Allowance
General Allowance	\$20,000

§ 4.3 Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price

§ 4.3.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.

§ 4.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

N/A

§ 4.3.3 The method of adjustment of the Contractor's Fee for changes in the Work:

N/A

§ 4.3.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

N/A

§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project.

§ 4.3.6 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager for the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the items in Section A.1 of Exhibit A, Determination of the Cost of the Work.

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price

§ 4.4.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.

§ 4.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

N/A

§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:

N/A

§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

N/A

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any:

(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 4.4.7 Guaranteed Maximum Price

§ 4.4.7.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed N/A (\$ N/A), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. (Insert specific provisions if the Contractor is to participate in any savings.)

Init.

N/A

§ 4.4.7.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

N/A

§ 4.4.7.3 Allowances included in the Guaranteed Maximum Price, if any:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Item	Allowance
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§ 4.4.7.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and upon certification of the Project Application and Project Certificate for Payment or Application for Payment and Certificate for Payment by the Construction Manager and Architect and issuance by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the 30th day of a month, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor not later than the 30th day of the next month subject to Section 5.1.7. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Construction Manager receives the Application for Payment, subject to Section 5.1.7.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

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

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

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of two percent (2%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of the General Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in

advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of two percent (2 %);

- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.1.4.4 The progress payment amount determined in accordance with Section 5.1.4.3 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the sum amount of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

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

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.4.3.1 and 5.1.4.3.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

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

§ 5.1.4.7 Payments to the Contractor shall be subject to New Jersey's Prompt Payment Act, N.J.S.A. 2A:30A-1, et seq. (the "Act"). For purposes of the Contract, the "billing date", as provided for in the Act shall be the date that the Application for Payment is received by the Owner. Any dispute regarding whether a party to this Contract has failed to make payments as required by the Act (and no other matters) may be submitted to mediation.

§ 5.1.4.8 Owner is a public entity that requires a vote in authorization for each periodic payment, final payment and retainage monies. The amount due may be approved and certified at the next scheduled public meeting of the Owner's governing body and paid during the Owner's subsequent payment cycle.

§ 5.1.4.9 The Contractor shall submit such additional paperwork as Owner may reasonably require for Owner's internal billing process or as may be required by Owner's lender.

§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price

§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit A, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

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

- .1 Take the Cost of the Work as described in Exhibit A, Determination of the Cost of the Work;
- .2 Add the Contractor's Fee, less retainage of percent (%). The Contractor's Fee shall be computed upon the Cost of the Work described in that Section at the rate stated in that Section; or if the Contractor's Fee is stated as a fixed sum, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .3 Subtract retainage of percent (%) from that portion of the Work that the Contractor self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Article 5 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or withdrawn a Certificate for Payment as provided in Section 9.5 of AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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

§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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

§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.10 of AIA Document A232-2009;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of percent (%). The Contractor's Fee shall be computed under the Cost of the Work at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a

- fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of percent (%) from that portion of the Work that the Contractor self-performs;
 - .5 Subtract the aggregate of previous payments made by the Owner;
 - .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - .7 Subtract amounts, if any, for which the Construction Manager or Architect have withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A232-2009.

§ 5.1.6.5 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.6.6 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager or Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

(Paragraph deleted)

§ 5.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A232-2009, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit A, Determination of the Cost of the Work when payment is on the basis of the Cost of the Work, with or without a Guaranteed Maximum payment; and
- .3 a final Certificate for Payment or Project Certificate for Payment has been recommended by the Construction Manager, issued by the Architect and approval by the Owner; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A232-2009, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A232-2009, the method of binding dispute resolution shall be as follows:

Init.

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 15.4 of AIA Document A232–2009.

Litigation in a court of competent jurisdiction.

Other: (Specify)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2009.

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2009.

§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price

§ 7.2.1 Subject to the provisions of Section 7.2.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2009.

§ 7.2.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A232–2009; however, the Owner shall then only pay the Contractor an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Sections 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 7.2.3 If the Owner terminates the Contract for cause when the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, and as provided in Article 14 of AIA Document A232–2009, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A232–2009 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.2.

§ 7.2.4 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 7.2.5 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2009; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A232–2009, except that the term 'profit' shall be understood to mean the Contractor's Fee as described in Sections 4.3.2 and 4.4.2 of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2009 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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(Insert rate of interest agreed upon, if any.)

Prime Rate %

§ 8.3 The Owner's representative:
(Name, address and other information)

Cumberland County Improvement Authority

Attn: Mort Isaacson

§ 8.4 The Contractor's representative:
(Name, address and other information)

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

8.6.1 Liquidated Damages Apply. The Liquidated Damages for failure to achieve substantial completion of the following components of the Work by the date identified in Section 3.3 are as follows:

Substantial Completion - \$500per day

8.6.2 Throughout this Agreement and the AIA A232 General Conditions, the Owner shall have the right to substitute itself in place of the Construction Manager or Architect, wherever the term "Architect" or "Construction Manager" is set forth in the Agreement.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition.

§ 9.1.2 The General Conditions are AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:

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

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

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

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents are:

- .1 AIA Document A132™–2009, Exhibit A, Determination of the Cost of the Work, if applicable.
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

- .3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

- .4 Other documents, if any, listed below:
(List here any additional documents which are intended to form part of the Contract Documents. AIA Document A232–2009 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

A 232-2009 - General Conditions of the Construction Contract.

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A232–2009.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A232–2009.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
See instructions to bidders for insurance and bonding requirements and dollar limits	

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

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)

216224669v1



AIA[®] Document A232[™] – 2009

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

(Name, and location or address)

Renovations for New Engineering Lab

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

Cumberland County Improvement Authority
745 Lebanon Road
Millville, New Jersey 08332

THE OWNER:

(Name, legal status and address)

County of Cumberland, New Jersey
164 W. Broad Street
Bridgeton, NJ 08302

THE ARCHITECT:

(Name, legal status and address)

Manders Merighi Portadin Farrell Architects, LLC
1138 E Chestnut Ave #4
Vineland, NJ 08360

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132[™]–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132[™]–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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NOTE: This index has been provided as a general reference only. Modifications have been made to this document that may render some or all of this index inaccurate.

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement), and consist of the Agreement, Conditions of the Contract (General, Supplementary and other 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. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding requirements).

§ 1.1.1.1 The term "Addenda issued prior to execution of the Contract", shall be understood to refer to Addenda numbered consecutively 1, 2, 3, etc. These Addenda will incorporate all changes made to the Contract up to the execution of the Agreements.

§ 1.1.1.2 "All instructions to bidders requiring on-site investigation or pre-contract performance relating to the work and material to be supplied by the subject contractor shall be and form a part of the Contract Documents."

§ 1.1.1.3 "Public Notice, Instructions To Bidders, and Agreements are also part of the Contract Documents".

§ 1.1.1.4 Written Notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if the former procedure cannot be utilized, then notice will be served if delivered at or sent by registered mail to the last business address known to the one giving notice.

§ 1.1.1.5 It is the intent of these documents to infer and to require the Contractor to recognize the phrase "Owner, through the Architect" as applicable to all submittals, requests and all such other administrative items as arise on this Project.

§ 1.1.1.6 The Contract Documents executed or identified in accordance with Section 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.

§ 1.1.1.7 At times the "Agreement" is also identified herein as the "Contract."

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract together with the Performance Bond, represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

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

§ 1.1.4 The Project. The Project is the total construction Described in the Agreement of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Multiple

Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 1.1.5 The Drawings. The Drawings are 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.

§ 1.1.6 The Specifications. The Specifications are that 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.

§ 1.1.6.1 Specification Standards - Wherever in the specifications, reference is made to ANSI or ASTM Standards, Federal Specifications, U.L., Factory Mutual, Consumer Product Standards, or similar recognized standards, the latest edition of the respective publishing agency shall be accepted as establishing the technical requirements which shall be complied with, unless date of publication is recorded in the Specifications.

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

§ 1.1.8 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.10 ENUMERATION OF THE DRAWINGS, SPECIFICATIONS AND ADDENDA

The Drawings and Specifications which form a part of this Contract are enumerated in the List of Drawings and the Table of Contents of the Project Manual. The Addenda which form a part of this Contract are enumerated in Article 9 of the Owner-Contractor Agreement.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3.1 In the event of a conflict or an inconsistency in or among the Contract Documents, or between the Contract Documents and applicable codes in effect at the time the Contract Sum is bid or negotiated, the Contractor shall, unless directed otherwise in writing by an Addendum or Change Order, provide the greatest quantity, highest quality, highest degree of safety, and most stringent material, equipment or Work.

§ 1.2.3.2 In all cases, detail drawings shall take precedence over scale drawings and figure dimensions on the drawings shall govern the setting out of work. Figure dimensions take precedence over designated scales, and Contractor shall carefully study and compare figure dimensions to verify them. Do not scale drawings to obtain figure dimensional information.

§ 1.2.3.3 Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of work and/or materials unless otherwise directed by written modification to the Contract in accordance with applicable provisions of these Conditions.

§ 1.2.3.4 Whenever the terms "approval" or "approved", "acceptable", "satisfactory", "proper" or other general qualifying terms are used in the Contract Documents, it shall be understood that reference is made to the ruling judgment of the Architect and Owner. The terms "approved" or "approval" mean written approval.

§ 1.2.3.5 The word "provide" includes furnishing, installing and connecting the item cited; the word "furnish" means delivery to the building; the word "install" means proper placement, hooking-up and/or adjustment, if hooking-up and/or adjustment is required.

§ 1.2.3.6 Any material or operation specified by reference to published specifications of Society, Association, Code or other published standard shall comply with requirements of the listed document thirty (30) days prior to receipt of bids. In a conflict between referenced document and Project Specifications, Project Specifications shall govern. In a conflict between referenced documents, the more stringent requirements shall govern. Abbreviations of technical organization titles, not defined in the Project Specifications, shall be interpreted by the Architect.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect, or Architect's consultants' reserved rights. Notwithstanding the foregoing, upon receipt of payment for the creation of the Instruments of Service, the Architect hereby grants to the Owner an irrevocable and unlimited license to use, retain, copy, and reproduce the Instruments of Service for its use in connection with the Project.

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

§ 1.5.3 The Architect may, in the course of providing services under the terms of the Owner Architect Agreement, provide copies of drawings, specifications or other documents, including the documents of the Architect's Consultants, in electronic or digital format (tapes, diskettes, CDs, electronic copies, or file attachments to electronic mail), to the Owner or others, for convenience or informational purposes. Electronic files of the documents are not substitutes for the signed and sealed Contract Documents in printed, hard copy form issued by the Architect. Electronic files are not Contract Documents. The Owner (or other user, with permission of the Owner), referring to electronic files should be particularly alert for inaccuracies, which may result from electronic transmission or translation, or inappropriate use or modification of electronic files without the Architect's knowledge. Any information or data obtained or derived from electronic files to create shop drawings or other submissions must be compared with the hard paper Construction Documents issued by the Architect for construction. Use of electronic documents for any reason is at the user's sole risk. In all cases the hard paper Construction Documents shall be given precedence in the event any discrepancies between the hard copy copies issued by the Architect and any electronic

transmitted documents are discovered. The user of such electronic transmitted documents shall notify the Architect immediately upon its knowledge of such discrepancies.

§ 1.5.3.1 The Architect, will, upon request of the Contractor and execution of an electronic document release by Contractor and Owner, transfer computer aided drafting (CAD) files on electronic media for convenience of the Contractor in preparing shop fabrication drawings. The electronic versions of the Contract Documents shall not be used in lieu of Shop Drawings. Information set forth on the CAD files is considered part of the Architect's instruments of service and shall not be used by Contractor for any purpose other than as a convenience in the preparation of shop fabrication drawings for the referenced project and any reuse, misuse or unauthorized modification of this information is prohibited. The file or files may be compressed for ease of transfer. Transfer is a one-time transfer of the media and does not include transfers in the future to include addenda or revisions to the drawings.

§ 1.5.3.2 Due to the potential that the information set forth on the CAD files can be modified unintentionally or otherwise, the Architect reserves the right to remove all indications of its ownership and/or involvement from each electronic file provided electronically.

§ 1.5.3.3 The Contractor shall not use the Architect's plans, reflected ceiling plans, sections and details in his submittals; Contractor shall review them and recreate them as necessary as part of his Shop Drawing submittal. Architect's floor plans may be used providing borders and other information identifying or pertaining to the Architect and/or his Consultants is removed.

§ 1.5.3.4 The Architect's CAD files will be prepared using various electronic software. The Architect makes no representation as to the compatibility of their files with any hardware or software of the user of any electronically transmitted files provided hereunder.

§ 1.5.3.5 The use of electronic files as a basis for the preparation of shop drawings shall not relieve the preparer from the obligation to properly verify and coordinate all field dimensions and conditions.

§ 1.5.4 Any individual opening or using electronic files provided by the Architect acknowledges that he has read and understands the above additional terms and conditions to the standard General Conditions, agrees to abide by such terms and conditions and has the written authorization of the Owner and Architect to access and/or use these documents. Unauthorized use of these documents is strictly prohibited.

§ 1.6 Transmission of Data in Digital Form

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 EXECUTION OF CONTRACT DOCUMENTS

§ 1.7.1 Execution of the Agreement by the Contractor is a representation that said Contract Documents are full and complete, are sufficient to have enabled the Contractor to determine the cost of the Work therein to enter into the Agreement and that the Contract Documents are sufficient to enable it to construct the Work outlined therein, and otherwise to fulfill all its obligations hereunder, including, but not limited to, Contractor's obligation to construct the Work for an amount not in excess of the Contract Sum and on or before the date(s) of Substantial Completion established in the Agreement. The Contractor further acknowledges and declares that it has visited and examined the site, examined all physical, legal, and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same. In connection therewith, Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to:

(1) the nature, location and character of the Project and the site, including, without limitation, the surface and subsurface conditions of the site and all structures and obstructions thereon and thereunder, both natural and man-made, and all surface and subsurface water conditions of the site and the surrounding area;

(2) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and

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(3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify Owner and Architect of such fact.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Article 4, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Upon reasonable written request Owner shall furnish to the Contractor, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Intentionally Deleted

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.2.6 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 fails to carry out Work in accordance with the Contract Documents, the Owner by written order signed by the Owner or the Construction Manager may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person.

§ 2.4 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner or Construction Manager to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3 and shall at once report to the Owner and Architect errors, inconsistencies or omissions discovered as a Request For Information in such form as the Architect or the Owner may require. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Owner and Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner and Architect, the Contractor shall assume total responsibility for such performance and shall bear total amount of the attributable costs for correction.

§ 3.2.2 Although the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect, Construction Manager and Owner, in writing.

§ 3.2.3 The Contractor shall, prior to starting the work on any single portion and at frequent intervals during the progress of the work, carefully study and compare the Agreement, Conditions of the Contract, Drawings, Specifications and other Contract Documents and shall at once report to the Architect and Owner any error, inconsistency or omission he may discover. Any necessary change, as a result of this discovery, shall be ordered as provided in Article 7, subject to the requirements of paragraph 1.2 and other provisions of the Contract Documents. Should the Contractor proceed with the work, without such notice to the Architect, having discovered such errors, inconsistencies or omissions, all costs arising therefrom shall be borne by the Contractor. If the Contractor fails to perform the requirement for reporting any non-conformity in documents or conditions, the Contractor shall be responsible for costs and damages caused by the delay or non-reporting of the issue.

§ 3.2.4 Intentionally Deleted.

§ 3.2.5 The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

§ 3.2.6 Should the Contractor elect to release work without approvals, same shall be at his own risk and expense. Such work, if it is determined by the Architect and Owner to not be in accordance with the requirements of the Contract Documents, shall be removed and replaced without additional cost or extension of time.

§ 3.2.7 The Contractor shall give the Architect timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work and the Architect shall provide such information with reasonable promptness. Such interpretations may, at the Architect's option, be issued in the form of additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be effected by Field Directive (as defined in 7.1.1.1) or other notice to the Contractor, and provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or instructions without additional cost or extension of contract time."

§ 3.2.8 In the event of any conflict among the Contact Documents, the Contractor shall notify the Owner, Construction Manager and the Architect of same and follow and comply with Architect's interpretation of the Contract Documents. In the event that the Owner and Architect fail to respond to the Contractor's notification within a reasonable period of time, then the Documents shall be construed according to the following priorities:

- Highest Priority: Change Orders.
- Second Priority: Modifications to the Agreement.
- Third Priority: Agreement.
- Fourth Priority: Specifications.
- Fifth Priority: Schedules.
- Sixth Priority: Large scale detail drawings (detail drawings having a scale of 3/4" and over).
- Seventh Priority: Large scale plan and section drawings (plan and section drawings having a scale equal to or larger than that used for the basic floor plan, as a case may be).
- Eighth Priority: Small scale detail drawings (detail drawings having a scale less than 3/4").
- Ninth Priority: Small scale plan and section drawings (plan and Section drawings having a scale less than that used on the basic floor plan, as a case may be).

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences procedures and safety and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instruction concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, procedures or safety. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. Contractor shall afford other Contractors retained by Owner and all subcontractors opportunity for introduction and storage of their materials and execution of their work, connect and coordinate his work with theirs, and cooperate with the Architect and with other Contractors so that work shall be done at proper time, in a manner not to delay others or increase costs.

§ 3.3.2 During the progress of the work, Contractor and subcontractors shall build in all material and apparatus furnished and set by other Contractors and subcontractors. Contractor and Subcontractors shall familiarize themselves

with the work of every Contractor and subcontractor whose work affects or ties in with his own, and shall be responsible for the finished result.

§ 3.3.3 Neither Contractor nor its employees shall be deemed to be employees of the Owner, but shall be independent contractors. Nothing in the Contract shall be construed as authority for the Contractor to make commitments which shall bind the Owner, or otherwise act on behalf of the Owner, except as Owner may expressly authorize in writing. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors. The Contractor shall be responsible for ensuring that each of its employees, agents, and subcontracted workers on the work site have proper contractor identification visible at all times. Guidelines for ID's are available from the Owner.

§ 3.3.4 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.3.5 The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.6 The Contractor shall cooperate and provide access, samples, material and other services to the Owner's testing agency at the Owner's or Architect's request during construction at no cost to the Owner.

§ 3.4 Labor and Materials

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

§ 3.4.1.1 The Contractor shall be responsible for safe storage and protection against theft or damage of all materials until they have been properly incorporated in the project and of all tools and equipment owned by himself or his subcontractors during the construction period and until removed from premises at the completion of the project.

§ 3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract and Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall also at all times use best efforts and its judgment as an experienced contractor to adopt and implement policies and practices which are designed to avoid work stoppages, slowdowns, disputes, or strikes, and shall at all times use best efforts to maintain project-wide labor harmony. The Owner reserves the right to require the Contractor to remove from the Project any of its personnel, or subcontractor's personnel, for violating Owner's policies, rules or regulations.

§ 3.4.3 Substitutions if permitted are subject to provisions of the Specifications and will only be considered within forty (40) days after Owner's award of the Project.

§ 3.4.3.1 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, and in accordance with the Owner's written approval and the Project Manual.

§ 3.4.3.2 By making requests for substitutions, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified. Any request for substitution shall include a written statement that highlights and brings to attention of Owner and Architect the differences between the proposed substituted product and the required item.
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified.

- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the A/E's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§3.4.4 All materials delivered to the premises which are to form a part of the work are to be considered the property of the Owner and must not be removed without the Owner's consent. Material not incorporated in the work shall become the Contractor's property and shall be removed from the Project Site at or prior to Substantial Completion, unless other arrangements are made with the Owner.

§3.4.5 No Contractor, nor Subcontractor, shall subcontract, sublet, sell, transfer, assign, purchase work or materials from an organization other than his/her own, or otherwise dispose of the contract or contracts or any portion thereof, or of his/her right, title or interest therein, without written permission from the Owner, or as otherwise provided by law.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager and Architect that materials and equipment furnished under the Agreement will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by Owner's abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, or improper operation by the Owner, or normal wear and tear and normal usage. If required by the Architect, Construction Manager or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranties shall run from the Date of Substantial Completion with the exception of items or systems deemed to be incomplete, not operating as designed, or defective at the time of Substantial Completion, for which the warranties shall run from the date such items or systems are complete, operating properly or no longer defective.

§ 3.5.2 The Contractor represents that all manufacturer and supplier warranties shall run directly to or be specifically assignable to the Owner. The Contractor warrants that all portions of the Work that will be covered by a manufacturer's or supplier's warranty shall be performed in such a manner so as to preserve all rights under such warranties. The Contractor hereby assigns to the Owner effective upon the termination of this Contract all manufacturer's and supplier's warranties relating to the Work, and the Contractor shall upon request of Owner, execute any documents reasonably requested by Owner to effectuate such assignment. If the Owner attempts to enforce a claim based upon a manufacturer's or supplier's warranty and such manufacturer or supplier refuses to honor such warranty based in whole or in part on a claim of defective installation by the Contractor, the Contractor shall be responsible for any resulting loss or damages incurred by the Owner as a result of the manufacturer's or supplier's refusal to honor such warranty. The Contractor's obligations under this Section 3.5.2 shall survive the expiration or earlier termination of the Contract.

§ 3.5.3 Any applicable warranties shall be transferred to the Owner by the Contractor at no additional cost or expense to the Owner.

§ 3.5.4 The Contractor agrees that all warranties in the Contract Documents survive acceptance of, delivery of, and payment for, the goods, whether any defect shall be latent or patent. The Contractor agrees to correct, without expense to, and to the satisfaction of the Owner, any defects that may develop in the Work. Any facilities, including buildings and their contents which have been damaged either directly or indirectly by the Work performed by the Contractor shall be repaired within ten (10) working days after receipt of written notice of the defect from the Owner by the Contractor at no cost to the Owner.

§ 3.6 Taxes

All Contractors, subcontractors, suppliers, etc. are required to pay all applicable taxes as required by law, except those taxes for which the Cumberland County Improvement Authority is exempt. In the event that taxes are due for

any component of this Project, the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 The Owner through the Construction Manager shall pay for, and Contractor shall secure, the building, mechanical, electrical and plumbing permits, the health and environmental impact fees due to water and sewer connections, and the zoning regulation fees and permits. The Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution of and completion of the Contract which are legally required when Bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall arrange and pay for any inspections by governmental authorities needed to obtain any necessary occupancy permits.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs, damages, losses and expenses attributable to such Work and its correction.

§ 3.7.3.1 Prior to application for Final Payment, Contractor shall furnish a written certification that the Work is in conformance with applicable laws, ordinances, rules, regulations and lawful orders.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 15. 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 by the Contractor's prior inspections, tests, reviews, the Geotechnical Report provided to Contractor or from the Contract Documents.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 Although it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

§ 3.7.6.1 The requirements of Section 3.7.3 do not waive the Contractor's responsibility of complying with the requirements of the Contract Documents when such requirements exceed those of any laws, ordinances, rules, regulations and orders of any public authority bearing on the Work.

§ 3.7.7 The Contractor shall pay all highway fees and for all damages to sidewalks, streets, building commercial areas

and other tenant areas or other public property, or to public utilities.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 Materials and Equipment under an allowance shall be selected promptly by the Owner to avoid delay;
- .2 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .4 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall be satisfactory to the Owner, in the Owner's sole discretion, and shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.1.1 The Contractor's superintendent shall be present at the job site at all times that work is being performed, including work performed during overtime. Contractor's superintendent shall perform only supervisory work, and shall not be an active tradesman, or be assigned to any manual work on the premises. The designated superintendent shall not be changed without the written consent of the Owner.

§ 3.9.2 The Contractor shall immediately remove from the Project, whenever requested by the Owner, any employee, Project Manager or Superintendent who is considered by the Owner to be incompetent or disposed to be disorderly or who, for any other reason, is not satisfactory to the Owner and the Project, and that person shall not again be employed on the Project without the consent of the Owner.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Owner reserves the right to require the Contractor to replace any employee, project manager and/or superintendent at no additional cost.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces.

§ 3.10.1.1 Immediately upon the execution of the Agreement, with or without the recommendation of the Construction Manager, the Contractor shall submit the following documents, for Architect's information, as may be requested by the Architect, and for the approval of the Owner: Lists of proposed material manufacturers and subcontractors, in quadruplicate, including mailing address of local office or D.B.A. address.

§ 3.10.1.2 Contractor shall retain an independent scheduling expert to produce a comprehensive CPM Schedule for the Project and all required monthly updates.

§ 3.10.2 The Contractor shall cooperate with the Architect and Construction Manager in scheduling and performing Contractor's work to avoid conflict, delay and/or interference with the work of other contractors or, the construction or operation of Owner's other forces.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Owner shall have the right to require a Recovery Schedule. The detail and format of the Recovery Schedule shall be determined by Owner or the Construction Manager in consultation with the Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.1.1 Shop Drawings shall include, notwithstanding any additional information required in trade sections: all working and erection dimensions: views as required to show fully all construction and fabrication methods, profiles and materials: all data on anchoring and relationship to other construction, sizes, types, finishes, and colors of material. Each sheet of Shop Drawings shall indicate name of project, applicable specification section, Contractor's stamp indicating approval, date of submittal, and any previous submittals.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Construction Manager and Architect, or in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

§ 3.12.5.1 The Contractor shall indicate his checking and coordination of the information shown on Shop Drawings by stamping each sheet of the prints and originals.

§ 3.12.5.2 In addition, on one set of prints, the Contractor shall perform his review and indicate review of specific dimensions, notes, etc., by yellowing or checking the specific information.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.8.1 Work performed contrary to this procedure shall be at the risk and expense of the Contractor. All Shop Drawings used for fabrication and erection shall be those approved by the Construction Manager and Architect, without change. If change is found to be necessary on any approved Shop Drawing, Product Data or Sample, it shall be resubmitted for approval of the Owner, Construction Manager and Architect.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 Contractor shall submit a Submittal Schedule within 15 days of Notice to Proceed. No Applications for Payment will be processed (i) until the Submittals Schedule has been submitted, and (ii) in the event that Contractor fails to provide Shop Drawings in accordance with the Submittal Schedule

§ 3.12.12 Shop Drawings shall be submitted in accordance with the Submittal Schedule electronically and accompanied by transmittal letter containing project name, Contractor's name, number of Drawings, titles, and other

pertinent data.

§ 3.12.13 Unless otherwise specified, the Contractor shall submit Shop Drawings, in quantities, as specified in the Specifications.

§ 3.12.14 Samples, Shop Drawings, and Product Data will be returned to Contractor noted for action as specified in the Specifications.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner and the Construction Manager before using any portion of the site.

§ 3.13.3 The Contractor shall sign for and be held responsible for all keys or other access devices issued to it by the Owner for the Owner's facilities. Should the Contractor fail to return the keys or other access devices on the specified date, the Contractor shall be responsible for all resulting costs in accordance with the Owner's Policies, Rules or Regulations.

§ 3.13.4 The Contractor shall be responsible for obtaining proper parking permits for all vehicles which will be parked on site. All costs for parking permits and for fines due to improperly parked vehicles is the responsibility of the Contractor.

§ 3.13.5 The Contractor shall not park in any area not designated for vehicle parking unless given permission by the Owner to do so. It will be the responsibility of the Contractor to repair and/or reimburse the Owner for damages to the Owner's property caused by the Contractor's vehicles.

§ 3.13.6 The portion of the Owner's property that may be used by Contractor shall be agreed upon with the Owner and the Construction Manager clearly designated. Such portion may be changed from time to time during the course of the work. Trespass and encroachment on reserved space shall not be made.

§ 3.13.7 The Owner reserves the right to grant or to deny permission for the erection of signs or advertisements of any kind, including Project Sign, on the building, site enclosure or premises. The Contractor shall not display, or permit to be displayed, any sign, trademark, poster, or other advertising device, on or about the building, site enclosure or premises except as may be required for proper conduct of the work, as a directory of Contractors engaged in the work, for emergency, or as may be specified.

§ 3.13.8 The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents.

§ 3.13.9 All Contractors shall confine their use of the premises for all purposes, to the areas occupied by the construction and related storage areas.

§ 3.13.10 The Contractor shall make no shipments in advance of the required shipping date, unless there is adequate storage area at the site of the Work, or such area is provided by Contractor. Any such advance shipment shall not entitle Contractor to any payment prior to the time when such payment would otherwise be due, if the shipment were made on the scheduled shipping date.

§ 3.13.11 The Contractor shall send proper notices, make all necessary arrangements and perform all other services required in order to protect and maintain all marked identified or known public utilities such as fire lines and plugs, electric, gas, water lines, sewer pipes, mechanical systems and all other items of this nature, and assume all responsibility and pay all costs for which the Owner may be liable if said services are interrupted by actions of the Contractor or subcontractors. Contractor acknowledges that all public utilities or other infrastructure may not be

identified or marked and Contractor has taken all reasonable precautions to identify all known and unknown utilities or other infrastructure.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents, neatly done by mechanics settled in their trade, and to the satisfaction of the Architect and Construction Manager.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Multiple Prime Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner's own forces or by other Multiple Prime Contractors except with written consent of the Construction Manager, Owner and such other Multiple Prime Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Multiple Prime Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Contractor shall not perform any cutting that will impair the strength of the structure. Any cutting that he considers too extensive or that will impair the strength of construction, shall be reported to the Owner, Construction Manager and Architect.

§ 3.14.4 All work that may be cut, damaged, disturbed or otherwise interfered with during the progress of the work of the various trades shall be fully, properly and carefully patched, repaired and made good in a first class manner satisfactory to the Construction Manager and the Architect by the Contractor whose work has been cut or damaged and requires repair.

§ 3.15 Cleaning Up

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

§ 3.15.1.1 The Contractor shall provide for the continual removal of rubbish and debris from the building until final completion of the Project and shall provide a dumpster on site, as required. Contractor shall also maintain 6 55-gallon drums (or equivalent) around the Project site for accumulation of trash. Contractor shall clean up the site on a daily basis, including the clean-up of all trash (including coffee cups, Styrofoam, insulation, etc.) and shall empty the 55-gallon drums as necessary and no less frequently than daily.

§ 3.15.1.2 Each Contractor shall sweep up and gather together daily, all his own rubbish and deposit same at a location(s) as directed in dumpsters provided by the Contractor.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.16.2 The Contractor shall promptly notify the Owner, Construction Manager and Architect of the presence of hazardous conditions at the site, including the start of hazardous operations or the discovery or exposure of hazardous substances.

§ 3.16.3 All Contractors shall keep only necessary equipment on site and shall cooperate with the Owner regarding location of stored material. No Contractor shall be allowed to unreasonably encumber the Project site (or building) with equipment and stored material and shall afford other contractors reasonable opportunity for introduction and storage of their materials and for execution of other work.

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§ 3.16.4 The Work under the Agreement shall not interfere with the Authority's operations.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. The Contractor shall also indemnify defend and hold the Owner harmless from and against any assertion of claims for mechanics' or construction liens or similar liens by any party that provided labor or materials for the Project except to the extent any such claims are the result of Owner's wrongful withholding of payment due under the Contract Documents. The Contractor's obligations under this Section 3.18.1, shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. This indemnification shall not cover the sole negligence or willful misconduct of Owner. Contractor's obligations under this Section 3.18 shall arise at the time written notice of a claim is first provided to Owner regardless of whether claimant has filed suit on the claim. Contractor's obligations shall exist even if Owner is the only party sued by claimant. The obligations of Contractor under this Section 3.18.1 shall survive the expiration or earlier termination of the Contract and shall bind Contractor for itself, successors and assigns.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. To the extent permitted by law, Contractor, for itself, its successors and assigns, hereby expressly agrees to waive any provision of the applicable State's Workers' Compensation Act, including Section 303(b), whereby the Contractor could preclude its joinder as an additional defendant or avoid liability for damages.

§ 3.18.3 The Contractor's indemnity obligations under this Paragraph 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees) and punitive damages (if any) arising out of, or in connection with any (i) violation of or failure to comply with any law, statute, ordinance, rules, regulation, code, or requirement of a public authority that bears upon the performance of the work by the Contractor, a subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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§ 4.1.2 The Owner shall retain a construction manager lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, the Owner shall employ a successor construction manager or architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written agreement in accordance with other provisions of the Agreement.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager will reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.10 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Architect 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. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.12 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7. and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These

will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.16 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.17 The Architect will interpret and decide matters concerning performance under, and requirements of the Contract Documents on written request of the Construction Manager, Owner or Contractor through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.18 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

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

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 A Supplier is a person or entity who has a direct or indirect contract with the Contractor, Subcontractor or Sub-subcontractor to furnish materials or equipment for the Work. The term "Supplier" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Supplier or an authorized representative of the Supplier.

§ 5.1.4 The term "Specialist" or "Specialty Contractor" as used in these specifications shall mean an individual or firm of established reputation, or, if newly organized, whose personnel have previously established a reputation in the same field, which is regularly engaged in, and which maintains a regular force of workmen skilled in either manufacturing or fabricating items required by the Agreement, installing items required by the Agreement, or otherwise performing work required by the Agreement. Where the Agreement Specifications require installation by a "Specialist", that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision. All other

requirements and provisions contained in these documents pertaining to subcontractors and Sub-subcontractors are applicable to Specialty Contractors.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Within 20 days of Notice to Proceed, the Contractor shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Where Contractor subcontracts portions of the Work, the entire responsibility for the subdividing of Work rests with the Contractor except where undivided responsibility is specified. The Owner and Architect are not responsible for the manner of the subdivision of the Work and neither will enter into or settle disagreements or disputes between Contractor and Subcontractor.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

(Paragraphs deleted)

ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Construction Manager and other Multiple Prime Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Multiple Prime Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces or other Multiple Prime Contractors.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, other Multiple Prime Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.1.1 A Field Directive is a directive issued by Construction Manager to proceed with a portion of the Work, when the directive is non-material, has no impact on Contract Sum or Contract Time (the "Field Directive"). The Contractor shall have no claim as a result of the Field Directive unless it shall, prior to complying with same and in any event no later than five (5) working days from the date such direction or order was given, submit to the Owner for the Owner's approval its change proposal.

§ 7.1.1.2 When submitting its change proposal, the Contractor shall include and set forth in clear and precise detail breakdowns of labor and materials for all trades involved and the estimated impact on the construction schedule, based upon an impact analysis of the current schedule. The Contractor shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets if requested of any Subcontractors.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, Field Directive or order for a minor change in the Work.

§ 7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order, Construction Change Directive or Field Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.1.5 Prior to submitting a Change Order, Contractor shall deliver to Owner, Construction Manager and Architect a proposal to resolve the outstanding issue through a no cost solution to resolve the problem. If Contractor, Architect and Construction Manager mutually decide there is no reasonable no cost solution, Contractor may proceed with the Change Order process

§ 7.2 Change Orders

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The methods used in determining adjustments to the Contract Sum shall be acceptable to the Architect, the Construction Manager and Owner and may include those listed in Paragraph 7.3.3.

§ 7.2.2.1 The Architect, Construction Manager and Owner require itemized pricing certifications on all change order proposals from the Contractor, subcontractors and sub-subcontractors regardless of their tier, including detailed line item estimates showing materials take-offs, materials prices by item and related labor-hour pricing information and extensions (by line item or by drawing, as applicable).

§ 7.2.2.2 No separate allowances for warranty expense will be allowed as a direct cost of a change order.

§ 7.2.2.3 Estimated materials costs shall reflect the Contractor's reasonably-anticipated actual net cost of the purchase of the materials needed for the change order work. Estimated materials costs shall reflect cost reductions available due to trade discounts, free materials credits, and/or volume rebates "Cash" discounts available on materials purchased for change order work shall be credited to the Owner if the Owner provides such cash to the Contractor in time for the

Contractor to take advantage of any such cash discounts. Price quotations from materials suppliers must be itemized with unit prices for each specific item to be purchased. "Lot Pricing" quotations will not be considered sufficient substantiating detail.

§ 7.2.2.4 Estimated labor costs shall be based on the actual cost per hour paid for those workers who the Contractor reasonably anticipates will perform the change order work.

§ 7.2.3 In Section 7.2.1.2 above, the allowance for overhead and profit combined, included in the total cost to the Owner, shall be based on the schedule contained in Section 7.3.10.1 through 7.3.10.5, and shall be indicated as separate line items on the Contractor's Cost Breakdown.

§ 7.2.4 The Contractor agrees it is responsible to submit accurate, correct and complete cost and pricing data to support its change order proposals or other contract price adjustments under the Agreement. The Contractor agrees that any designated Owner's representative will have the right to examine the records of the Contractor to verify the accuracy and the appropriateness of the pricing data used to price change order proposals.

§ 7.2.5 When a Change Order involves both additions and deletions in material, the net quantity is to be determined and the appropriate overhead and profit is to be applied to the net quantity.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as

the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, hours, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above; labor costs shall be actual costs (wages and benefits), not standardized billing rates. Where major cost items are subcontracts, they shall be itemized also. Labor hours shall be completely broken down. In no case will a change involving over \$1,500.00 be approved without such itemization.

§ 7.4 Minor Changes in the Work

The Architect has 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 will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 Contract Time shall commence as of the date of the Notice to Proceed unless otherwise specified in the Agreement. However, the Work to be performed under this Agreement shall not commence until the required insurance has been obtained and approved. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" shall mean a calendar day of twenty-four (24) hours beginning at 12:00 Midnight. The term "working day" (or "business day") shall mean any calendar day except Saturdays, Sundays and legal holidays at the

place of the Project. A time limit ending on a weekend or holiday shall be automatically extended to the succeeding working day.

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 The Architect in coordination with the Construction Manager will set work hours. Contractor will be required to work nights, weekends, or holidays as necessary to complete the work in accordance with the Schedule.

NOTE: Standard work hours for this project may be affected by local Noise Ordinance. Contractor shall be responsible to adhere to the Noise Ordinance, including night, weekend and holiday work. All utility shut downs, interruptions, work in or adjacent to an existing building will be coordinated through the Construction Manager and may have to be performed during dictated hours.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration, or by other causes that the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time, at Owner's sole option, the Contractor shall: (a) be entitled to an extension of the Contract Time; (b) be ordered by the Owner to accelerate the schedule to make up the lost time comprising the delay, including second shift work; or (c) a combination of (a) and (b), which shall be memorialized by Change Order, subject to the provisions of this Article 8.3.

§ 8.3.2 Intentionally Deleted.

§ 8.3.3 Except as set forth herein, this Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 Where the cause of delay is due to weather conditions, extension of time shall be granted only for unusually severe weather, as determined by reference to historical data. The term "historical data" as used in the preceding sentence shall be construed according to this formula: Average rainfall (or snow or extreme low temperature) for the past five (5) years for the month in question, plus twenty (20) percent. In other words, weather is not deemed to be unusually severe unless it is twenty (20) percent worse than the average for that month over the last five years.

§ 8.3.5 No payment or allowance of any kind or extension of time shall be made to the Contractor as compensation for damages on account of hindrance or delay from any cause in the progress of the Work, when the Architect, Construction Manager or Owner determines the delay to be: (i) avoidable; (ii) caused in whole or in part by Contractor's negligence or intentional misconduct; or (iii) to be Contractor's fault (in whole or in part) for the delay, including but limited to any delay attributable to lack of coordination or cooperation by or between the Contractor and his Subcontractors.

§ 8.3.6 The Owner shall have the right to defer the beginning or to suspend in whole or in any part, of the Work herein contracted to be done, whenever, in the opinion of the Owner, Construction Manager or Architect, it may be necessary or expedient for the Owner to do so. If the Contractor is delayed in completion of the Work by a reason not set forth in Section 8.3.5, then for all such delays and suspensions the Contractor shall be entitled to compensation for the delay in accordance with Section 8.3.6.2.

§ 8.3.6.1 The Contractor shall not be entitled to make a claim for delay (regardless of the cause of the delay) unless within two (2) business days after the beginning of such delay or delays, Contractor files a written request providing notification of the delay (including specific explanation as to the cause) with the Architect, Construction Manager and Owner. In case of a continuing cause of delay, only one request is necessary.

§ 8.3.6.2 Notwithstanding anything else contained herein, Contractor's remedy for the Owner's negligence, bad faith, active interference, tortious conduct, or other reasons un contemplated by the parties that delay the Contractor's performance, Contractor shall be entitled to an extension of the Contract Time and for such additional compensation as determined by the Owner. The Owner may also order the Contractor to accelerate the schedule to make up the lost time comprising the delay, including second shift work and for additional compensation as determined by the Owner which shall be memorialized by Change Order subject to the provisions of this Article 8.3.

§ 8.4 COMPLETION AND LIQUIDATED DAMAGES

§ 8.4.1 The Contractor shall achieve Substantially Completion of all the Work included in the Contract Documents ready for the Owner's utilization and occupancy as defined in Section 8.1.3 of the General Conditions within the time required by this Contract.

§ 8.4.2 Pursuant to the provisions of Section 8.4.1, for each calendar day delay in either (a) Substantial Completion of the Work or (b) any of the milestones for the Project as set forth in the Contract Documents and as set forth on Contractor's Form of Proposal, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty, the sum set forth of as noted in the Form of Proposal, the Specifications (Summary of Work) and as set forth on Contractor's Form of Proposal and each Contractor and its surety shall be liable for the amount thereof and the sum may be deducted by the Owner from any monies outstanding.

§ 8.4.3 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work required in this Contract shall be commenced on a date to be specified in the "Notice to Proceed".

§ 8.4.3.1 The Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within a reasonable time for the completion of the same, taking into consideration the average climatic change and usual industrial conditions prevailing in this locality.

§ 8.4.4 If the said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the Owner the amount specified, not as a penalty but as Liquidated Damages, for each and every calendar day that the Contractor shall fail to achieve Substantial Completion.

§ 8.4.4.1 The amount of the Liquidated Damages has been fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain should the Contractor not achieve Substantial Completion by the required date.

§ 8.4.4.2 It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for performance of any act whatsoever; and where under the Contract an additional time is allowed for completion of any task or the Work, the new time limit, fixed by such extension should shall be of the essence of this Contract.

§ 8.4.5 If job progress has been adversely affected by the non-attendance of any Contractor at a scheduled job meeting of which he has been duly notified, such adverse effect shall be considered as job delay; and the Contractor shall be subject to payment of damages to the Owner in an amount not to exceed \$1,000.00 for each occurrence, unless the Contractor was excused by the Construction Manager prior to the meeting and the Owner shall have the right to deduct this from any payments due Contractor.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.

§ 9.3.1.2 Application for Payment shall be prepared on the standard AIA Application for Payment Form G702 and shall be submitted with five (5) copies.

§ 9.3.1.3 With each Application for Payment, the Contractor shall (i) Certify that the Application for Payment represents a just estimate of Work performed and material supplied during the period covered by the Application for Payment; (ii) Certify that there are no known construction liens outstanding at the date of the Application for Payment, except for such bills not paid but so included there is no known basis for the filing of any construction liens on the Work and that waivers from all Subcontractors and all material suppliers have been obtained in such form as to constitute an effective waiver of lien under applicable state laws; (iii) Provide Contractor's waiver of lien for all amounts requested in such Application for payment; (iv) Provide waivers of lien from each Subcontractor, Sub-subcontractor, material supplier, and all other parties that provided labor or material for which payment was requested under previous Applications for Payment and that also have statutory lien rights; (v) Provide any other information reasonably requested by Owner or Owner's title insurance company as a prerequisite for such title insurance company to insure over mechanic's liens, construction liens and all other similar liens attributable to the Work covered by the applicable Application for Payment; and (vi) evidence that any union wages and benefits are current.

§ 9.3.1.4 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises where the Work is being performed, by any person claiming that the Contractor or any Subcontractor or other person under it has failed to make payment for any labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or if the Contractor or any Subcontractor or other person under it causes damage to the Work or to any other work on the Project and Contractor fails to rectify same in a timely manner and within no later than 30 days, the Construction Manager and Architect may withhold certification of payment and Owner shall withhold payment which the Architect in consultation with the Construction Manager shall deem sufficient to (1) satisfy, discharge, and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate the Owner for and indemnify it against any and all losses, liability, damages, costs and expenses, including reasonable attorneys' fees and disbursements, which

may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes. If such amount is insufficient therefor, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 9.3.2 Payments on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, will be made by the Owner subject to the following conditions:

§ 9.3.2.1 Such materials or equipment shall have been fabricated or assembled specifically for the Project and delivered to storage no earlier than needed for the orderly progress of the Work as demonstrated by the Progress Schedule. Nothing herein contained is to limit or prejudice the right of the Owner to undertake claim for damages due to delay in delivery and installation of any such material or equipment prepaid prior to the delivery by Contractor.

§ 9.3.2.2 Title to such materials or equipment shall pass to the Owner pursuant to the Contractor's bill of sale which shall contain guarantee of replacement thereof in the event of damage thereto or disappearance thereof due to any cause. The Contractor shall also affirm that he will pay for such materials or equipment immediately upon receipt of payment from the Owner.

§ 9.3.2.3 In the case of off-site storage, the Contractor shall also provide Consent of Surety to such payment and insurance of such materials or equipment against the perils set forth in Article 11, both while in storage and during transportation to the site.

§ 9.3.2.4 Raw materials or other materials or equipment readily duplicated or usable on other projects will be paid for only after the materials are incorporated in the construction.

§ 9.3.2.5 Partial or complete payment for materials and equipment stored either on or off site shall not be construed as relieving the Contractor of its responsibility for the care and protection of such materials and equipment used. Contractor shall be responsible for any and all damage to such materials and equipment occurring prior to the incorporation of such materials and equipment into the Work on the Project Site and Owner shall have the right in addition to all other remedies available to Owner under the Contract to reject any such materials and equipment damaged prior to the incorporation thereof in to the work on the project site. Materials and equipment stored either on or off site requiring protection from weather, heat, cold or moisture shall be suitably protected by Contractor as required by the material manufacturer. The materials and equipment shall be labeled as the property of the Owner and shall be accessible to the Owner for inspection at all times and shall be segregated from other materials and equipment at the storage facility. If the Contractor requests payment for material stored either on or off site, Owner shall be entitled to receive, at the minimum, the following prior to make payment: (i) receipt of a Bill of Sale; (ii) proof of suitable and convenient storage, and (iii) receipt of a certificate of insurance naming the Owner as loss payee which insurance should cover the stored materials in an amount equal to the full replacement value of such materials.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner by incorporation of the Work into the construction and upon receipt of payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances. The Contractor further agrees that receipt of payment for any Application for Payment shall, upon receipt of such payment and to the fullest extent permitted by law, be conclusively deemed to waive all liens with respect to said Work, materials and labor to which the Contractor then may be entitled; provided, however, that in no event shall such waiver of lien rights waive right to payment for said Work, materials and labor.

§ 9.3.4 Each Application for Payment or periodic estimate requesting payment must be accompanied by a certification that each subcontractor, vendor or supplier has been paid all amounts due him on the basis of the previous periodic payment to the Contractor, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Contractor shall be required to furnish his own written explanation.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment

from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.3 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager or Architect.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may decide not to certify payment and shall withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and

9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also decide not to certify for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims ;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.
- .8 failure to maintain the site in a safe and satisfactory manner in accordance with construction practices as determined by the Owner or Architect;
- .9 any labor strike or labor disruption whatsoever which impacts the progress of the Work;
- .10 failure to maintain Record Drawings.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default due to withholding payment while any of the above grounds remains uncured.

§ 9.5.3 If the Contractor disputes any determination of the Construction Manager or Architect with respect to any Application for Payment, the Contractor shall nevertheless continue to diligently prosecute the Work. In no event shall the Contractor stop Work, except pursuant to Section 9.7 hereof.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect. Owner shall comply with the New Jersey Prompt Payment Act when making payments, subject to Section 5.1.10 of the AIA A132.

§ 9.6.2 The Contractor shall pay each Subcontractor, within ten (10) calendar days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

(Paragraphs deleted)

§ 9.7.1 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

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

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the requirements of the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the

Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

§ 9.9.1.1 It shall be mutually understood and agreed that such occupancy does not relieve the Contractor from completing the Work within the time period specified.

§ 9.9.1.2 The occupancy of any portion of the building does not constitute an acceptance of any work as the Project will be accepted as a whole and not in units.

§ 9.9.1.3 Further, such occupancy alone shall not determine when Substantial Completion has been reached.

§ 9.9.1.4 Substantial Completion shall be as defined in Sections 9.8.1 and 9.8.2 of these AIA General Conditions

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor and Architect shall jointly visit the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Prior to such occupancy; however, the Architect, a representative of the Owner, and the Contractor shall fully review the portions of the building to be occupied and Architect shall prepare a complete punch list of omissions of materials, faulty workmanship, or any items to be repaired, torn out or replaced.

§ 9.9.3 Unless otherwise agreed upon in writing by the Owner, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Document shall be assembled and delivered by the Contractor to the Construction Manager as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Construction Manager, Architect and Owner until all warranties and guarantees have been received and approved by the Construction Manager, Architect and Owner.

§ 9.10.1.1 Should the Project require inspections beyond the inspections noted herein i.e. substantial completion, substantial completion verification and final inspection, the Owner will retain the right to reduce from the Contractor's final payment those monies necessary to provide for the cost of the additional inspections. The reduction shall not be considered as a part of any "Liquidated Damages" for failure to complete the Work within the specified Contract Time, nor shall the reduction be considered as a penalty to the Contractor; but shall be for the actual cost of monies required for the reimbursement of fees for the Architect, Construction Manager, Owner and any other specialists necessary for obtaining final approval of the Work.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and

other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 The Contractor shall deliver to the Construction Manager, for delivery to the Owner, before final payment is due on the Contract, all required written guarantees/warranties in form acceptable to the Architect properly sworn to and signed by a responsible officer of the Contractor's firm, warranting all work and materials included in his Contract against all defects not due to ordinary wear and use for a period of two (2) years from the Substantial Completion unless the Contract Documents require a longer date.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4

(Paragraphs deleted)
Intentionally Deleted.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction or operations by the Owner or other Contractors.
- .5 the general public

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.3.1 Contractor shall comply with all applicable provisions of governing agencies (State, Federal & Municipal). All machinery, openings, excavations and other physical hazards shall be guarded in accordance with OSHA requirements. In case of conflicts, the most stringent restrictions will apply.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to, asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Construction Manager and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or

substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resumed upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 Emergencies

§ 10.4.1 In an emergency not due to Contractor's negligence or wrongful act(s) affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.4.1.1 The Contractor and each Subcontractor shall report immediately to the Architect, Construction Manager and/or Owner's Representative every accident to persons or damage to property and shall furnish in writing full information, including testimony of witnesses regarding any and all accidents. In addition, the Contractor shall complete the Architect's and/or Owner's accident report form within 24 hours of the accident and submit it to the party designated by the Owner.

§ 10.4.2 Accidents: The Contractor shall provide such equipment and facilities as are necessary or required, in case of accident, for first-aid service to anyone who may be injured in the progress of the Work and he shall have standing arrangements for the removal and hospital treatment of any employee who may be injured or who may become ill.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 GENERAL INSURANCE REQUIREMENTS

§ 11.1.1 The Contractor shall not commence work until the Contractor has obtained at the Contractor's own expense all of the insurance required hereunder and such insurance has been provided to the Owner; nor shall the Contractor allow any subcontractor to commence work on any subcontract until all insurance required of the Subcontractor has been so obtained and approved by the Contractor and the Contractor and Subcontractors shall submit to the Owner of

original certificates of insurance signed by authorized representatives of the insurers or, at the Owner's request, certified copies of the required insurance policies.

§ 11.1.2 Insurance as required hereunder shall be in force throughout the term of the Contract and for one (1) year after final acceptance of the Project by Owner in accordance with Section 11.1.12.iv. Original certificates signed by authorized representatives of the insurers or, at the Owner's request, certified copies of insurance policies, evidencing that the required insurance is in effect, shall be maintained with the Owner throughout the term of the Contract and for one (1) year after final acceptance of the Project by Owner.

§ 11.1.3 The Contractor shall require all Subcontractors to maintain during the term of the Contract commercial general liability insurance, business auto liability insurance, and workers' compensation and employer's liability insurance (and umbrella excess or excess liability insurance) to the same extent required of the Contractor in Sections 11.1.12, 11.1.13, 11.1.14 and 11.1.15 unless any such requirement is expressly waived or amended by the Owner in writing. The Contractor shall furnish Subcontractors' certificates of insurance prior to the Subcontractor's commencement of Work at the Property and from time to time upon request, which shall demonstrate that Subcontractors are naming Owner and the other parties required by Section 11.1.19 as additional insured on a primary and non-contributory basis.

§ 11.1.3.1 Furnish, in duplicate, certificates herein called for and specifically set forth evidence of all coverage required by Sections 11.1.12, 11.1.13, 11.1.14, 11.1.15, 11.1.16, 11.1.17 and 11.1.18 and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

§ 11.1.4 All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation, non-renewal or material reduction in coverage until sixty (60) days prior written notice has been given to the Owner.

§ 11.1.5 No acceptance and/or approval of any insurance by the Owner shall be construed as relieving or excusing the Contractor or the Contractor's Surety from any liability or obligation imposed upon either or both of them by the provisions of this contract.

(Paragraphs deleted)

§ 11.1.6 It is recognized that in some instances that insurance may be acceptable which is underwritten by an insurance company that is not reported in the A.M. Best Rating Guide, or the coverage is extended under a self-insured program. This insurance, or self-insurance, must be in conformity with the rules and regulations of the Commissioner of Insurance of the State of New Jersey. Any insurance or self-insurance of this type is subject to the review and acceptance by the County Risk Manager or the County Counsel. Furthermore written proof of acceptability by the Office of the Commissioner of Insurance may be necessary.

(Paragraph deleted)

§ 11.1.7 All required insurance coverages must be underwritten by insurers allowed to do business in the State of New Jersey and acceptable to the Owner. The insurers must also have a policyholders' A.M. Best Company Financial Strength Rating (FSR) of "A" or better, and be Financial Size Category (FSC) of "VII" or higher in accordance with the latest evaluation by A.M. Best Company, unless Owner grants specific approval for an exception.

§ 11.1.8 Any deductibles or retentions in excess of \$10,000 shall be disclosed by the Contractor, and are subject to Owner's written approval. Any deductible or retention amounts elected by the Contractor or imposed by the Contractor's insurer(s) shall be the sole responsibility of the Contractor.

(Paragraph deleted)

§ 11.1.9 Any and all return premiums and/or dividends for insurance coverage directly charged to the Owner by the Contractor in connection with this Contract shall belong to and be payable to the Owner.

(Paragraph deleted)

§ 11.1.10 If the Owner is damaged by the failure or neglect of the Contractor to purchase and maintain insurance as described and required herein, without so notifying the Owner, then the Contractor shall bear all costs properly attributable thereto.

§ 11.1.11 The Contractor shall purchase and maintain the following insurance coverages which will insure against claims which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Insurance shall be written for not less than the limits specified below or required by law, whichever is greater.

§ 11.1.12 Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:

- \$1,000,000 each occurrence;
- \$1,000,000 personal and advertising injury;
- \$2,000,000 general aggregate per project;
- \$2,000,000 products/completed operations aggregate;
- \$100,000 damage to rented or lease properties; and
- \$5,000 medical expense.

This insurance shall include coverage for all of the following:

- i. General aggregate limit applying on a per-project basis;
- ii. Liability arising from premises and operations;
- iii. Liability arising from the actions of independent contractors;
- iv. Liability arising from products and completed operations with such coverage to be maintained for two (2) years after completion of the Work;
- v. Contractual liability including protection for the Contractor from bodily injury and property damage claims arising out of liability assumed under this Contract; and
- vi. Liability arising from the explosion, collapse, or underground (XCU) hazards.

§ 11.1.13 Business auto liability insurance or its equivalent with a minimum limit of \$1,000,000 per accident and including coverage for all of the following:

- i. Liability arising out of the ownership, maintenance or use of any auto whether owned, hired/leased or non-owned;
- ii. Automobile contractual liability; and
- iii. endorsed to include pollution coverage.

§ 11.1.14 Workers' compensation insurance or its equivalent with statutory benefits as required by any State or Federal law, including "other states" coverage; employer's liability insurance with minimum limits of:

- \$1,000,000 each accident for bodily injury by accident;
- \$1,000,000 each employee for bodily injury by disease; and
- \$1,000,000 policy limit for bodily injury by disease.

§ 11.1.15 Umbrella excess liability or excess liability or its equivalent to be purchased by Contractor and Sub-Contractors with minimum limits:

Contractor:

- (\$10,000,000) per occurrence;
- (\$10,000,000) aggregate for other than products/completed operations and auto liability and
- (\$10,000,000) products/completed operations aggregate.

Sub-Contractor:

- (\$5,000,000) per occurrence;
- (\$5,000,000) aggregate for other than products/completed operations and auto liability and
- (\$5,000,000) products/completed operations aggregate.

And including all of the following coverages which shall, in each instance, be at least as broad as the underlying coverage, on the applicable schedule of underlying insurance:

- i. Commercial general liability;
- ii. Business auto liability; and
- iii. Employer's liability.

§ 11.1.16 Pollution liability including to be purchased by Contractor and the following Sub-Contractors (demolition, foundation, grading, excavation and concrete) with minimum limits:

\$1,000,000 per pollution incident:
\$3,000,000 annual aggregate

During the life of this contract the Contractor shall procure and maintain Pollution Liability Insurance with limits of liability not less than \$1,000,000 per pollution incident and \$3,000,000 annual aggregate. This insurance shall provide coverage pollution incidents that cause bodily injury, including death; loss or damage to property, including loss of use of damaged property or of property that has not been physically injured; cleanup and monitoring costs; and costs and expenses incurred in the investigation, defense, or settlement of claims. If coverage is on "claims made" basis, Contractor must maintain comparable coverage and limits for a minimum of four (4) years following the expiration date of said contract.

§ 11.1.17 Owners and Contractors Protective Liability Coverage to be purchased by Contractor in the amount of \$5,000,000 per occurrence. This insurance shall provide coverage for bodily injury, including death; loss or damage to property, including loss of use of damaged property or of property that has not been physically injured; cleanup and monitoring costs; and costs and expenses incurred in the investigation, defense, or settlement of claims. This coverage shall be maintained in force for the full period of this agreement.

§ 11.1.18 Intentionally deleted.

§ 11.1.19 Owner and Construction Manager, and their elected and appointed officials, officers, consultants, agents, employees, and assigns, and the Architect and their officers, consultants, agents, and employees, and assigns shall be named as additional insureds on the Contractor's commercial general liability insurance and umbrella excess or excess liability insurance policies with respect to liability arising out of the Contractors products, installation, and/or services provided under this Contract. Such coverage shall extend to cover the additional insureds for liability arising out of the following:

- i. Ongoing operations;
- ii. Owner's general supervision and/or services as provided by the Contractor under this Contract; and
- iii. Products and completed operations.

The commercial general liability policy and the umbrella liability or excess liability policies, if required herein, must include additional insured language in i., ii., and iii., as follows:

"This policy is endorsed to include as insureds Owner, Construction Manager, Cumberland County, and the County's elected and appointed officials, officers, consultants, agents and employees, but only for liability arising out of 'your product' or 'your work' for the Owner by or for you."

Special note: The policy must include CG2010 ed. 10 01 and CG2037 ed. 10 01.. A manuscript endorsement with the above wording is required. Copy of the endorsement is to be included with all certificates of insurance.

§ 11.1.20 Insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees under any Contractor's liability insurance or self-insurance required herein, including, but not limited to, umbrella or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or self-insurance. (Any cross suits or cross liability exclusion shall be deleted from Contractor's liability insurance policies required herein.)

§ 11.1.21 Insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees as specified herein shall be primary, and any other insurance, self-insurance,

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coverage or indemnity available to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees shall be excess of and non-contributory with insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees as specified herein.

§ 11.1.22 If any liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions:

§ 11.1.22.1 The Contractor shall agree to provide certificates of insurance evidencing the above coverages for a period of one (1) year after final payment of the Contract. Such certificates shall evidence a retroactive date no later than the beginning of the Work under this Agreement; or

§ 11.1.22.2 The Contractor shall purchase, at his own expense, an extended (minimum three (3) years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the Work under this Agreement. Proof of extension shall annually be presented to the Owner.

§ 11.1.23 All Certificates of Insurance shall be submitted when required by the Contract Documents, but in no event later than the commencement of Work. The Certificates of Insurance shall be subject to review by the Owner and shall show the Certificate Holder as follows:

Cumberland County College
3322 College Drive
Vineland, New Jersey 08362

Certificates of Insurance not reading as per above will not be acceptable and delay contract approval.

Questions regarding these insurance requirements may be directed to Cumming Corp. at **(908) 516-7016**

Certificates showing insurance companies with A.M. Best rate which have been reduced below the minimum required "A:VII" WILL NOT BE ACCEPTED.

It is suggested that any Contractor or subcontractor, before submitting a Certificate of Insurance to Owner, check with their insurance agent to assure that the Insurance Company shown on their certificate has a proper spread of risk, soundness of reinsurance, quality of assess, adequacy of loss reserves and experience of management which qualifies it to receive the A.M. Best Rate as described in the Owner's Insurance Requirements.

§ 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance, or solely at the Owner's option, the Owner may self-insure the Owner's liability exposures.

§ 11.3 Intentionally deleted.

(Paragraphs deleted)

§ 11.4 BUILDER'S RISK INSURANCE (OWNER TO PURCHASE)

(Paragraph deleted)

§ 11.4.1 The Owner shall purchase and maintain builder's risk insurance on a replacement cost basis with a limit at least equal to the initial Contract Sum. This insurance shall be maintained until final acceptance of the Project by the Owner or until no person or entity other than the Owner has an insurable interest in the covered property, whichever is earlier. This builder's risk insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as set forth in Owner's builders risk policy.

§ 11.4.2 Insurance shall be on an "all-risk" or equivalent policy form and shall insure against the perils of fire, extended coverage, theft, vandalism, malicious mischief, collapse and windstorm. Coverage is to apply for debris removal including demolition occasioned by a covered loss. This insurance shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such covered loss. Coverage for other perils

such as flood and earthquake or for loss caused by the enforcement of any applicable ordinance or law shall not be required unless otherwise provided in the Contract.

(Paragraph deleted)

§ 11.4.3 This builder's risk insurance shall cover all of the following types of property:

- i. All structures to be constructed, under construction, and/or already constructed;
- ii. All materials, equipment, machinery and supplies which are to be incorporated into the Project; and
- iii. Temporary structures of any nature whatsoever.

(Paragraph deleted)

§ 11.4.4 The Contractor shall be responsible for payment of any deductibles applicable under this builder's risk insurance, boiler and machinery insurance or other property insurance applicable to this Project.

(Paragraph deleted)

§ 11.4.5 Unless otherwise provided in the Contract Documents, this builder's risk insurance shall cover materials to be incorporated into the Work and the Project which are off the site, and also such materials in transit.

(Paragraph deleted)

§ 11.4.6 The Owner and Contractor waive all rights against each other and against the Architect, Owner's Representative, Owner's other Contractors and own forces described in Article 6, if any, and the Subcontractors, sub-subcontractors, elected and appointed officials, officers, agents, employees and consultants of any of them, for property damage to or loss of use of the Work to the extent that such property damage or loss of use is covered by this builder's risk insurance, boiler and machinery insurance or other property insurance applicable to the Work. The policies shall provide such waivers of subrogation by endorsement or otherwise.

(Paragraph deleted)

§ 11.4.7 Any loss covered under this builder's risk insurance, boiler and machinery insurance or other property insurance applicable to the Work shall be payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to any mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractors, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payment to their Sub-subcontractors in similar manner.

(Paragraph deleted)

§ 11.4.8 Owner, as fiduciary, shall have the power to adjust and settle a loss with insurers.

(Paragraph deleted)

§ 11.4.9 The builders risk insurance required by this Section 11.4 is not intended to cover machinery, tools or equipment owned or rented by the Contractor, or its Subcontractors, which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor and its Subcontractors shall, at their own expense, purchase and maintain property insurance coverage for owned, leased, or rented machinery, tools or equipment. The Contractor and its Subcontractors hereby waive all rights against the Owner and its elected and appointed officials, officers, agents, employees and consultants for property damage to or loss of use of such machinery, tools or equipment to the extent that such property damage or loss of use is covered by the Contractor's or Subcontractor's property or equipment floater insurance or other similar property insurance maintained by the Contractor or its Subcontractors. The policies shall provide such waivers of subrogation by endorsement or otherwise.

(Paragraphs deleted)

§ 11.5 PERFORMANCE BOND, PAYMENT BOND and MAINTENANCE BOND REQUIREMENTS

(Paragraph deleted)

§ 11.5.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds shall be obtained from a company lawfully authorized to do business in the State of New Jersey and have an A.M. Best and Company rating of "A" or better; and the cost of all of the bonds shall be included in the Contract Sum. The amount of each bond shall be equal to 100 percent of the Contract Sum.

(Paragraphs deleted)

§ 11.5.2 The Contractor shall deliver the required payment and performance bonds to the Owner in accordance with the Contract Documents.

(Paragraphs deleted)

§ 11.5.3 The Contractor shall post a two (2) year Maintenance Bond covering 100 percent of the Contract Sum after acceptance of the Work by Owner and prior to the release of the Payment and Performance Bond.

§ 11.5.4 The Contractor shall require the attorney who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney, indicating the monetary limit of such power..

§ 11.5.5 The Contractor shall provide Owner and Architect with the name, address, phone number and other contact information of the local agent of the Company issuing the Project bonds.

§ 11.6 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, the Construction Manager and their consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.6 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.6.1 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.6. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.6.2 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, post a bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.6.3 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Owner will have the right to deduct such sum, or sums, of money from the amount of the Contract Sum as it determines to be appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

(Paragraph deleted)

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Construction Manager, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.4.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents.

§ 13.5 Tests and Inspections

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

§ 13.5.1.1 When work has been installed contrary to any contract requirement and the Contractor requests the privilege of testing in lieu of removal, such testing shall be at the Contractor's expense.

§ 13.5.2 If the Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§ 13.5.5 If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 Inspections and Tests required to establish compliance with the Contract Documents and specified to be "by Owner", will be made by an independent testing agency selected and paid for by the Owner. Retesting required as a result of first test showing non-compliance with the Contract Documents will be performed by the same agency, with costs paid for by the Contractor. Representatives of the testing agency shall have access to the Work at all times. The Contractor shall provide facilities for such access in order that the agency may properly perform its function.

§ 13.5.8 The independent agency, employed by the Owner, shall prepare the test reports, logs and certificates applicable to the specific inspection and test and promptly deliver the specified number of copies of same to the designated parties. Other required certificates of inspections, testing, or approval shall be secured by the Contractor and delivered by Contractor to the Architect and/or Construction Manager, in such time as not to delay progress of the Work of final payment thereof.

§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6.1 The Contractor shall not be entitled to any payment of interest for any reason, action or inaction by the Architect or the Owner.

§ 13.6.2 Any payments withheld for time delays, faulty materials, or workmanship, or any other reason provided by this Contract, shall not bear interest for period of delay or non-acceptance.

§ 13.7 Intentionally Deleted.

§ 13.8 NEW JERSEY PREVAILING WAGE ACT

§ 13.8.1 This project is subject to the provisions of the New Jersey Prevailing Wage Act and the general prevailing minimum wage for each craft or classification as determined by the Commissioner of the New Jersey Department of Labor and Workforce Development.

§ 13.9 DISCRIMINATION PROHIBITED

§ 13.9.1 In compliance with NJSA 10:2-1 et seq. agrees:

§ 13.9.1.1 a. In the hiring of persons for the performance of work under this contract by **the Contractor** or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates; b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex ; c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for

any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

§ 13.9.1.2 That this Contract may be cancelled or terminated by the government agency and all money due, or to become due under the Contract, may be forfeited for a violation of the terms or conditions of that portion of the Contract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if all Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

(Paragraph deleted)

.or

- .3 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work properly executed and for payment of costs directly related to Work thereafter performed by Contractor in terminating the Contract, including reasonable demobilization and cancellation charges, proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit thereon.

(Paragraphs deleted)

§ 14.1.3 If all of the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.2.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract after providing Contractor with seven (7) days' notice and opportunity to work ("Cure Period") if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of breach of a provision of the Contract Documents.
- .5 Contractor is adjudged bankrupt or insolvent, subject to the provision of the Bankruptcy Laws and specifically 11 U.S.C., Paragraph 365;
- .6 Contractor makes a general assignment for the benefit of creditors;
- .7 a trustee or receiver is appointed for Contractor or for any of Contractor's property;
- .8 Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- .9 Contractor disregards the authority of the Owner, Construction Manager or Architect; or
- .10 is debarred from performing public work in New Jersey or any other jurisdiction or is otherwise guilty of a breach of a provision of the New Jersey's Local Public Contracts Law and all other laws or regulations applicable to construction of public projects;
- .11 abandons the Work;
- .12 fails or refuses to perform a material obligation under the Agreement;

- .13 fails without cause to make prompt payment duly owing to a Subcontractor, provided that Owner is current on all of its payment obligations owing to Contractor;
- .14 Contractor fails to remove any lien or claim of lien filed against the Project by any of its Subcontractors, material suppliers, or any Sub-subcontractor provided that Owner has paid the Contractor for the amount sought in such lien by the Subcontractor or material supplier and that Owner is current on all of its payment obligations owing to Contractor; or
- .15 Contractor fails to achieve Final Completion within thirty (30) days of the Final Completion Date.

Contractor shall have the right to cure to the defaults within the Cure Period. If Contractor cures the default within the Cure Period, then Owner may not terminate the Agreement.

§ 14.2.2 When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. At any time, the Owner may free itself from all obligations hereunder and terminate such contract by satisfying the following conditions:

- .1. Give written notice of cancellation to Contractor;
- .2 Reimburse Contractor for all labor and engineering costs that it has incurred in connection with the Work prior to its receipt of written notice of cancellation by Owner;
- .3 Reimburse Contractor for the cost of all material and equipment that was purchased specifically for the Work; provided, if certain of said material and equipment is of such nature that Contractor can readily and promptly use it in fabrication of other material and equipment and/or other Work not covered by the Contract, then Contractor shall not be reimbursed by Owner for the cost of said reusable equipment;

.4 Reimburse Contractor for all reasonable cancellation charges paid by it on account of commitments made specifically for materials and equipment in connection with the Work; and

.5 Pay to Contractor a percentage on all costs reimbursable to Contractor under Subsections .2, .3, and .4 above to cover overhead and profit (but not, as set forth in 14.4.3, for overhead and profit on uncompleted Work not otherwise covered by .2, .3, and .4 herein); however, in no event shall the total amount of a payment or payments made in accordance with Paragraphs 2, 3, 4, and 5 of this Section 14.4 exceed the Contract Sum.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 **Notice of Claims.** Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within seven (7) days after occurrence of the event giving rise to such Claim or within seven (7) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, except that in order for the Contractor to request time for a delay, the Contractor must file a claim as provided in Article 8. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

§ 15.1.3 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 **Claims for Additional Cost.** § 15.1.4.1 If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to executing Work for which the Claim relates. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued on behalf of Owner, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) any other reasonable grounds, Claim shall be filed in accordance with the procedure established herein. Failure to file a Claim in accordance with this Section shall constitute a waiver thereof.

§ 15.1.4.2 Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.4.3 The required notice shall include, to the extent then known by the Contractor, full details and substantiating data to permit evaluation by the Owner, Construction Manager and the Architect. If further, or other, information

subsequently becomes known to the Contractor, it shall promptly be furnished to the Owner and the Architect in writing.

§ 15.1.4.4 In determining the validity of costs for additional work, the Construction Manager and the Architect will be guided by such standard referenced as "Means cost data", current construction costs, or any other standard construction industry references, all as issued for the year during which work was performed." The maximum allowance for overhead and profit on change order work shall be as scheduled under Section 7.3.10.

§ 15.1.5 Claims for Additional Time

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time shall be governed by Section 8.3.4 and is demonstrated to have an adverse effect on the scheduled construction.

§ 15.1.5.3 The required notice shall include, to the extent then known by the Contractor, full details and substantiating data to permit evaluation by the Owner, Construction Manager and the Architect. If further, or other, information subsequently becomes known to the Contractor, it shall promptly be furnished to the Owner, Construction Manager and the Architect in writing.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives Claims against Owner for consequential damages arising out of or relating to this Contract. This waiver includes:

- .1 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to Contractor's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.7 Injury or Damage to Person or Property. If either party to the Contract for Construction suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the Architect and the other party within a reasonable time not exceeding 7 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 or 15.1.5.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision

Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect and Construction Manager, if the Architect or Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MANDATORY MEDIATION FOR DISPUTE RESOLUTION

(Paragraphs deleted)

§15.3.1 Pursuant to N.J.S.A. 40A-11-50, all claims, disputes and other matters in question between the Contractor and the Owner arising out of, or relating to, the Contract Documents or the breach thereof, except with respect to the Construction Manager's or Architect's decisions on matters relating to artistic effect, and except for claims which have been waived by the making or acceptance of final payment as provided by Sections 9.10.1 through 9.10.4, inclusive, shall to the extent required by the Prompt Payment Act, be submitted to non-binding mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect.

(Paragraph deleted)

§15.3.1.1 Notwithstanding industry rules or any provision of law to the contrary, whenever a dispute concerns more than one contract, such as when a dispute in a contract involving construction relates to a contract involving design, architecture, engineering or management, upon the demand of a contracting party, other interested parties to the dispute shall be joined unless the arbitrator, mediator or other person appointed to resolve the dispute determines that such joinder is inappropriate. Notwithstanding industry rules or any provision of law to the contrary, whenever more than one dispute of a similar nature arises under a construction contract, or related construction contracts, upon the demand of a contracting party, the disputes shall be joined unless the arbitrator, mediator or other person appointed to resolve the dispute determines that the disputes are inappropriate for joinder.

(Paragraph deleted)

§15.3.1.2 In the event a claim or dispute or other matter in question between the Contractor and the Owner cannot be resolved by non-binding mediation, the matter shall be decided in a court of competent jurisdiction.

(Paragraph deleted)

§15.3.1.3 No litigation arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, the Architect, its employees or consultants except by written consent of containing a specific reference to the Owner-Contractor Agreement and signed by the Architect, Construction Manager, the Owner, the Contractor and any other person sought to be joined. No litigation shall include by consolidation, joinder or in any other manner, parties other than the Owner, the Contractor and any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded in the litigation. No person other than the Owner or Contractor shall be included as an original third party or additional third party to a litigation whose interest or responsibility is insubstantial. Any consent to litigation involving an additional person or persons shall not constitute consent to litigation of any dispute not described therein or with any person not named or described therein. The foregoing agreement to litigate and any other agreement to litigate with an additional person or persons duly consented to by the parties to the Owner-Contractor Agreement shall be specifically enforceable under prevailing law.

(Paragraphs deleted)

§15.3.2 Notice of litigation shall be filed in writing with the other party to the Agreement and with the court having competent jurisdiction, and a copy shall be filed with the Architect, Construction Manager and the Owner. The litigation shall be made within the time limits specified in this Agreement, where applicable, and in all other cases within a reasonable time after the claim, dispute and other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§15.3.3 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

§16 MECHANICS' LIENS

§16.1 Contractor shall promptly pay for all materials furnished, labor supplied or performed by others, rental for equipment employed, and services rendered by public utilities in or in connection with the prosecution of the work, whether or not the said material, labor, equipment and services entered into and become component parts of the work or improvement contemplated. This provision is intended to assure payment of every person, co-partnership, association or corporation who, as subcontractor or otherwise has furnished material, supplied or performed labor, rented equipment or supplied services in connection with the prosecution of the work as aforesaid, and shall preclude the filing by any such person, co-partnership, association or corporation of any mechanic's lien claim against Owner for such material, labor or rental of equipment.

§16.2 The Contractor, for any and all subcontractors and parties acting through or under them or any of them, covenants and agrees by and with the Owner that no mechanic's liens or claims shall be filed or maintained by the said Contractor or any subcontractors or other party acting through or under it, them or any of them against the aforesaid building and/or the lot of ground or cartilage appurtenant thereto, or against the interests of the Owner on account of any work done or materials furnished by them or any of them, whether prior to the execution of this Contract, under the aforesaid contract or under any supplemental contract thereto for extra or additional work or otherwise for, toward, in or about the work on the lot of ground herein described above, or any work or material therefore, and the said Contractor for itself and its subcontractors and all persons acting for or under it, them or any of them hereby expressly waives and relinquishes the right to have, file or maintain any mechanic's claim or lien against the said building and/or the lot of ground herein described above or cartilage appurtenant thereto; to the interest of the Owner, it being the intent of the parties hereto that Contractor shall only possess those rights and remedies against Owner which are created by the terms and provision of this Agreement and are based upon the contractual relationship between Owner and Contractor as defined and limited by this Agreement and any changes or modifications thereto.

§16.3 Contractor further agrees that if, notwithstanding Owner's payment of all amounts not in dispute, the foregoing, any suit, lien or claim occasioned by the Contractor's performance of this Contract, whether directly or indirectly, or is filed by the Contractor, its Subcontractor, sub-subcontractors, materialmen or suppliers in any court having jurisdiction of the premises and the same matures into a lien against the property, Contractor shall immediately cause such lien to be discharged as to such property by posting bond or by such other means as may be provided under the applicable statutes and rules of court or shall otherwise indemnify, defend and save Owner harmless on account of any such claims, liens or suits.

ARTICLE 17 INTERPRETATIONS IN WRITING

§ 17.1 Neither the price bid for the Work of any Contract nor the Contract Sum, shall be based in any manner upon oral opinions or real or alleged instructions of an oral nature, regardless of whether such opinions or instructions are expressed by the Owner, the Architect, the Construction Manager, the Contractor, or agents or representatives of any of them.

§ 17.2 These provisions do not intend to deny normal discussion, recommendations, explanations, suggestions, approvals, rejections, and similar activity in pursuit of the Work of the Project on an oral basis, such as at job conferences and otherwise at the site. In such instances the written reports, correspondences, shop drawing records, written Field Directives and other written data shall govern over personal claims regarding statements made contrary to the written data.

§ 17.3 Interpretations of Contract Documents, to be effective for claim purposes or for justification as to proper procedure in performing the Work, must be obtained in writing before such claim is made or such work begun.

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Additions and Deletions Report for **AIA® Document A232™ – 2009**

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PAGE 1

Renovations for New Engineering Lab

...

Cumberland County Improvement Authority
745 Lebanon Road
Millville, New Jersey 08332

...

County of Cumberland, New Jersey
164 W. Broad Street
Bridgeton, NJ 08302

...

Manders Merighi Portadin Farrell Architects, LLC
1138 E Chestnut Ave #4
Vineland, NJ 08360

PAGE 2

15 **CLAIMS AND DISPUTES**
16 **MECHANICS' LIENS**

17 **INTERPRETATIONS IN WRITING**

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NOTE: This index has been provided as a general reference only. Modifications have been made to this document that may render some or all of this index inaccurate.

PAGE 11

§ 1.1.1.1 The term "Addenda issued prior to execution of the Contract", shall be understood to refer to Addenda numbered consecutively 1, 2, 3, etc. These Addenda will incorporate all changes made to the Contract up to the execution of the Agreements.

§ 1.1.1.2 "All instructions to bidders requiring on-site investigation or pre-contract performance relating to the work and material to be supplied by the subject contractor shall be and form a part of the Contract Documents."

§ 1.1.1.3 "Public Notice, Instructions To Bidders, and Agreements are also part of the Contract Documents".

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User Notes:

(926380619)

§ 1.1.1.4 Written Notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if the former procedure cannot be utilized, then notice will be served if delivered at or sent by registered mail to the last business address known to the one giving notice.

§ 1.1.1.5 It is the intent of these documents to infer and to require the Contractor to recognize the phrase "Owner, through the Architect" as applicable to all submittals, requests and all such other administrative items as arise on this Project.

§ 1.1.1.6 The Contract Documents executed or identified in accordance with Section 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.

§ 1.1.1.7 At times the "Agreement" is also identified herein as the "Contract."

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract together with the Performance Bond, represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

...

§ 1.1.4 The Project. The Project is the total construction Described in the Agreement of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Multiple Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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§ 1.1.6.1 Specification Standards - Wherever in the specifications, reference is made to ANSI or ASTM Standards, Federal Specifications, U.L., Factory Mutual, Consumer Product Standards, or similar recognized standards, the latest edition of the respective publishing agency shall be accepted as establishing the technical requirements which shall be complied with, unless date of publication is recorded in the Specifications.

...

§ 1.1.9 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.10 ENUMERATION OF THE DRAWINGS, SPECIFICATIONS AND ADDENDA

The Drawings and Specifications which form a part of this Contract are enumerated in the List of Drawings and the Table of Contents of the Project Manual. The Addenda which form a part of this Contract are enumerated in Article 9 of the Owner-Contractor Agreement.

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§ 1.2.3.1 In the event of a conflict or an inconsistency in or among the Contract Documents, or between the Contract Documents and applicable codes in effect at the time the Contract Sum is bid or negotiated, the Contractor shall, unless directed otherwise in writing by an Addendum or Change Order, provide the greatest quantity, highest quality, highest degree of safety, and most stringent material, equipment or Work.

§ 1.2.3.2 In all cases, detail drawings shall take precedence over scale drawings and figure dimensions on the drawings shall govern the setting out of work. Figure dimensions take precedence over designated scales, and Contractor shall carefully study and compare figure dimensions to verify them. Do not scale drawings to obtain figure dimensional information.

§ 1.2.3.3 Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of work and/or materials unless otherwise directed by written modification to the Contract in accordance with applicable provisions of these Conditions.

§ 1.2.3.4 Whenever the terms "approval" or "approved", "acceptable", "satisfactory", "proper" or other general qualifying terms are used in the Contract Documents, it shall be understood that reference is made to the ruling judgment of the Architect and Owner. The terms "approved" or "approval" mean written approval.

§ 1.2.3.5 The word "provide" includes furnishing, installing and connecting the item cited; the word "furnish" means delivery to the building; the word "install" means proper placement, hooking-up and/or adjustment . if hooking-up and/or adjustment is required.

§ 1.2.3.6 Any material or operation specified by reference to published specifications of Society, Association, Code or other published standard shall comply with requirements of the listed document thirty (30) days prior to receipt of bids. In a conflict between referenced document and Project Specifications, Project Specifications shall govern. In a conflict between referenced documents, the more stringent requirements shall govern. Abbreviations of technical organization titles, not defined in the Project Specifications, shall be interpreted by the Architect.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect, or Architect's consultants' reserved rights. Notwithstanding the foregoing, upon receipt of payment for the creation of the Instruments of Service, the Architect hereby grants to the Owner an irrevocable and unlimited license to use, retain, copy, and reproduce the Instruments of Service for its use in connection with the Project.

...

§ 1.5.3 The Architect may, in the course of providing services under the terms of the Owner Architect Agreement, provide copies of drawings, specifications or other documents, including the documents of the Architect's Consultants, in electronic or digital format (tapes, diskettes, CDs, electronic copies, or file attachments to electronic mail), to the Owner or others, for convenience or informational purposes. Electronic files of the documents are not substitutes for the signed and sealed Contract Documents in printed, hard copy form issued by the Architect. Electronic files are not Contract Documents. The Owner (or other user, with permission of the Owner), referring to electronic files should be particularly alert for inaccuracies, which may result from electronic transmission or translation, or inappropriate use or modification of electronic files without the Architect's knowledge. Any information or data obtained or derived from electronic files to create shop drawings or other submissions must be compared with the hard paper Construction Documents issued by the Architect for construction. Use of electronic documents for any reason is at the user's sole risk. In all cases the hard paper Construction Documents shall be given precedence in the event any discrepancies between the hard copy copies issued by the Architect and any electronic transmitted documents are discovered. The user of such electronic transmitted documents shall notify the Architect immediately upon its knowledge of such discrepancies.

§ 1.5.3.1 The Architect, will, upon request of the Contractor and execution of an electronic document release by Contractor and Owner, transfer computer aided drafting (CAD) files on electronic media for convenience of the Contractor in preparing shop fabrication drawings. The electronic versions of the Contract Documents shall not be used in lieu of Shop Drawings. Information set forth on the CAD files is considered part of the Architect's instruments of service and shall not be used by Contractor for any purpose other than as a convenience in the preparation of shop fabrication drawings for the referenced project and any reuse, misuse or unauthorized modification of this information is prohibited. The file or files may be compressed for ease of transfer. Transfer is a one-time transfer of the media and does not include transfers in the future to include addenda or revisions to the drawings.

§ 1.5.3.2 Due to the potential that the information set forth on the CAD files can be modified unintentionally or otherwise, the Architect reserves the right to remove all indications of its ownership and/or involvement from each electronic file provided electronically.

§ 1.5.3.3 The Contractor shall not use the Architect's plans, reflected ceiling plans, sections and details in his submittals; Contractor shall review them and recreate them as necessary as part of his Shop Drawing submittal. Architect's floor plans may be used providing borders and other information identifying or pertaining to the Architect and/or his Consultants is removed.

§ 1.5.3.4 The Architect's CAD files will be prepared using various electronic software. The Architect makes no representation as to the compatibility of their files with any hardware or software of the user of any electronically transmitted files provided hereunder.

§ 1.5.3.5 The use of electronic files as a basis for the preparation of shop drawings shall not relieve the preparer from the obligation to properly verify and coordinate all field dimensions and conditions.

§ 1.5.4 Any individual opening or using electronic files provided by the Architect acknowledges that he has read and understands the above additional terms and conditions to the standard General Conditions, agrees to abide by such terms and conditions and has the written authorization of the Owner and Architect to access and/or use these documents. Unauthorized use of these documents is strictly prohibited.

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§ 1.7 EXECUTION OF CONTRACT DOCUMENTS

§ 1.7.1 Execution of the Agreement by the Contractor is a representation that said Contract Documents are full and complete, are sufficient to have enabled the Contractor to determine the cost of the Work therein to enter into the Agreement and that the Contract Documents are sufficient to enable it to construct the Work outlined therein, and otherwise to fulfill all its obligations hereunder, including, but not limited to, Contractor's obligation to construct the Work for an amount not in excess of the Contract Sum and on or before the date(s) of Substantial Completion established in the Agreement. The Contractor further acknowledges and declares that it has visited and examined the site, examined all physical, legal, and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same. In connection therewith, Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to:

(1) the nature, location and character of the Project and the site, including, without limitation, the surface and subsurface conditions of the site and all structures and obstructions thereon and thereunder, both natural and man-made, and all surface and subsurface water conditions of the site and the surrounding area;

(2) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and

(3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having

visited the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify Owner and Architect of such fact.

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~~§ 2.1.2 The Upon reasonable written request~~ Owner shall furnish to the Contractor ~~within fifteen days after receipt of a written request,~~ information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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~~§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~ Intentionally Deleted

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If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 ~~or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to by~~ written order signed by the Owner or the Construction Manager may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other ~~person or entity, except to the extent required by Section 6.1.3.~~ person.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten day seven day~~ period after receipt of written notice from the Owner or Construction Manager to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, after consultation with the Construction Manager.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3 and shall at once report to the Owner and Architect errors, inconsistencies or omissions discovered as a Request For Information in such form as the Architect or the Owner may require. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Owner and Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner and Architect, the Contractor shall assume total responsibility for such performance and shall bear total amount of the attributable costs for correction.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions. Although the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, any nonconformity discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents, shall be reported promptly to the Architect, Construction Manager and Owner, in writing.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require, shall, prior to starting the work on any single portion and at frequent intervals during the progress of the work, carefully study and compare the Agreement, Conditions of the Contract, Drawings, Specifications and other Contract Documents and shall at once report to the Architect and Owner any error, inconsistency or omission he may discover. Any necessary change, as a result of this discovery, shall be ordered as provided in Article 7, subject to the requirements of paragraph 1.2 and other provisions of the Contract Documents. Should the Contractor proceed with the work, without such notice to the Architect, having discovered such errors, inconsistencies or omissions, all costs arising therefrom shall be borne by the Contractor. If the Contractor fails to perform the requirement for reporting any non-conformity in documents or conditions, the Contractor shall be responsible for costs and damages caused by the delay or non-reporting of the issue.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. ~~Intentionally Deleted.~~

§ 3.2.5 The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

§ 3.2.6 Should the Contractor elect to release work without approvals, same shall be at his own risk and expense. Such work, if it is determined by the Architect and Owner to not be in accordance with the requirements of the Contract Documents, shall be removed and replaced without additional cost or extension of time.

§ 3.2.7 The Contractor shall give the Architect timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work and the Architect shall provide such information with reasonable promptness. Such interpretations may, at the Architect's option, be issued in the form of additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be effected by Field Directive (as defined in 7.1.1.1) or other notice to the Contractor, and provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or instructions without additional cost or extension of contract time."

§ 3.2.8 In the event of any conflict among the Contract Documents, the Contractor shall notify the Owner, Construction Manager and the Architect of same and follow and comply with Architect's interpretation of the Contract Documents.

In the event that the Owner and Architect fail to respond to the Contractor's notification within a reasonable period of time, then the Documents shall be construed according to the following priorities:

- Highest Priority: Change Orders.
- Second Priority: Modifications to the Agreement.
- Third Priority: Agreement.
- Fourth Priority: Specifications.
- Fifth Priority: Schedules.
- Sixth Priority: Large scale detail drawings (detail drawings having a scale of 3/4" and over).
- Seventh Priority: Large scale plan and section drawings (plan and section drawings having a scale equal to or larger than that used for the basic floor plan, as a case may be).
- Eighth Priority: Small scale detail drawings (detail drawings having a scale less than 3/4").
- Ninth Priority: Small scale plan and section drawings (plan and Section drawings having a scale less than that used on the basic floor plan, as a case may be).

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§ 3.3.1 ~~The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures~~ procedures and safety and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instruction concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner required means, methods, techniques, sequences or procedures. Contractor shall afford other Contractors retained by Owner and all subcontractors opportunity for introduction and storage of their materials and execution of their work, connect and coordinate his work with theirs, and cooperate with the Architect and with other Contractors so that work shall be done at proper time, in a manner not to delay others or increase costs.

§ 3.3.2 ~~The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. During the progress of the work, Contractor and subcontractors shall build in all material and apparatus furnished and set by other Contractors and subcontractors. Contractor and Subcontractors shall familiarize themselves with the work of every Contractor and subcontractor whose work affects or ties in with his own, and shall be responsible for the finished result.~~

§ 3.3.3 ~~The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work. Neither Contractor nor its employees shall be deemed to be employees of the Owner, but shall be independent contractors. Nothing in the Contract shall be construed as authority for the Contractor to make commitments which shall bind the Owner, or otherwise act on behalf of the Owner, except as Owner may expressly authorize in writing. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors. The Contractor shall be responsible for ensuring that each of its employees, agents, and subcontracted workers on the work site have proper contractor identification visible at all times. Guidelines for ID's are available from the Owner.~~

§ 3.3.4 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.3.5 The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.6 The Contractor shall cooperate and provide access, samples, material and other services to the Owner's testing agency at the Owner's or Architect's request during construction at no cost to the Owner.

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§ 3.4.1.1 The Contractor shall be responsible for safe storage and protection against theft or damage of all materials until they have been properly incorporated in the project and of all tools and equipment owned by himself or his subcontractors during the construction period and until removed from premises at the completion of the project.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract and Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall also at all times use best efforts and its judgment as an experienced contractor to adopt and implement policies and practices which are designed to avoid work stoppages, slowdowns, disputes, or strikes, and shall at all times use best efforts to maintain project-wide labor harmony. The Owner reserves the right to require the Contractor to remove from the Project any of its personnel, or subcontractor's personnel, for violating Owner's policies, rules or regulations.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Substitutions if permitted are subject to provisions of the Specifications and will only be considered within forty (40) days after Owner's award of the Project.

§ 3.4.3.1 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, and in accordance with the Owner's written approval and the Project Manual.

§ 3.4.3.2 By making requests for substitutions, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified. Any request for substitution shall include a written statement that highlights and brings to attention of Owner and Architect the differences between the proposed substituted product and the required item.
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified.
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the A/E's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.4 All materials delivered to the premises which are to form a part of the work are to be considered the property of the Owner and must not be removed without the Owner's consent. Material not incorporated in the work shall become the Contractor's property and shall be removed from the Project Site at or prior to Substantial Completion, unless other arrangements are made with the Owner.

§3.4.5 No Contractor, nor Subcontractor, shall subcontract, sublet, sell, transfer, assign, purchase work or materials from an organization other than his/her own, or otherwise dispose of the contract or contracts or any portion thereof, or of his/her right, title or interest therein, without written permission from the Owner, or as otherwise provided by law.
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~~The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.~~

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager and Architect that materials and equipment furnished under the Agreement will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by Owner's abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, or improper operation by the Owner, or normal wear and tear and normal usage. If required by the Architect, Construction Manager or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranties shall run from the Date of Substantial Completion with the exception of items or systems deemed to be incomplete, not operating as designed, or defective at the time of Substantial Completion, for which the warranties shall run from the date such items or systems are complete, operating properly or no longer defective.

§ 3.5.2 The Contractor represents that all manufacturer and supplier warranties shall run directly to or be specifically assignable to the Owner. The Contractor warrants that all portions of the Work that will be covered by a manufacturer's or supplier's warranty shall be performed in such a manner so as to preserve all rights under such warranties. The Contractor hereby assigns to the Owner effective upon the termination of this Contract all manufacturer's and supplier's warranties relating to the Work, and the Contractor shall upon request of Owner, execute any documents reasonably requested by Owner to effectuate such assignment. If the Owner attempts to enforce a claim based upon a manufacturer's or supplier's warranty and such manufacturer or supplier refuses to honor such warranty based in whole or in part on a claim of defective installation by the Contractor, the Contractor shall be responsible for any resulting loss or damages incurred by the Owner as a result of the manufacturer's or supplier's refusal to honor such warranty. The Contractor's obligations under this Section 3.5.2 shall survive the expiration or earlier termination of the Contract.

§ 3.5.3 Any applicable warranties shall be transferred to the Owner by the Contractor at no additional cost or expense to the Owner.

§ 3.5.4 The Contractor agrees that all warranties in the Contract Documents survive acceptance of, delivery of, and payment for, the goods, whether any defect shall be latent or patent. The Contractor agrees to correct, without expense to, and to the satisfaction of the Owner, any defects that may develop in the Work. Any facilities, including buildings and their contents which have been damaged either directly or indirectly by the Work performed by the Contractor shall be repaired within ten (10) working days after receipt of written notice of the defect from the Owner by the Contractor at no cost to the Owner.

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~~The All Contractors, subcontractors, suppliers, etc. are required to pay all applicable taxes as required by law, except those taxes for which the Cumberland County Improvement Authority is exempt. In the event that taxes are due for any component of this Project, the Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. The Owner through the Construction Manager shall pay for, and Contractor shall secure, the building, mechanical, electrical and plumbing permits, the health and environmental impact fees due to water and sewer connections, and the zoning regulation fees and permits. The Contractor shall secure and pay for other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids all other permits and governmental fees, licenses and inspections necessary for proper execution of and completion of the Contract which are legally required when Bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall arrange and pay for any inspections by governmental authorities needed to obtain any necessary occupancy permits.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs, damages, losses and expenses attributable to such Work and its correction.

§ 3.7.3.1 Prior to application for Final Payment, Contractor shall furnish a written certification that the Work is in conformance with applicable laws, ordinances, rules, regulations and lawful orders.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both, conditions. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 15. 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 by the Contractor's prior inspections, tests, reviews, the Geotechnical Report provided to Contractor or from the Contract Documents.

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§ 3.7.6 Although it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

§ 3.7.6.1 The requirements of Section 3.7.3 do not waive the Contractor's responsibility of complying with the requirements of the Contract Documents when such requirements exceed those of any laws, ordinances, rules, regulations and orders of any public authority bearing on the Work.

§ 3.7.7 The Contractor shall pay all highway fees and for all damages to sidewalks, streets, building commercial areas and other tenant areas or other public property, or to public utilities.

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but

the Contractor shall not be required to employ persons or entities ~~to whom against which~~ the Contractor ~~has~~ makes reasonable objection.

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- .1 Materials and Equipment under an allowance shall be selected promptly by the Owner to avoid delay;
- .2 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- ~~.2~~ .3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- ~~.3~~ .4 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall be satisfactory to the Owner, in the Owner's sole discretion, and shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.1.1 The Contractor's superintendent shall be present at the job site at all times that work is being performed, including work performed during overtime. Contractor's superintendent shall perform only supervisory work, and shall not be an active tradesman, or be assigned to any manual work on the premises. The designated superintendent shall not be changed without the written consent of the Owner.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect through the Construction Manager, the name and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review. Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.

Contractor shall immediately remove from the Project, whenever requested by the Owner, any employee, Project Manager or Superintendent who is considered by the Owner to be incompetent or disposed to be disorderly or who, for any other reason, is not satisfactory to the Owner and the Project, and that person shall not again be employed on the Project without the consent of the Owner.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Owner reserves the right to require the Contractor to replace any employee, project manager and/or superintendent at no additional cost.

...

§ 3.10.1.1 Immediately upon the execution of the Agreement, with or without the recommendation of the Construction Manager, the Contractor shall submit the following documents, for Architect's information, as may be requested by the Architect, and for the approval of the Owner: Lists of proposed material manufacturers and subcontractors, in quadruplicate, including mailing address of local office or D.B.A. address.

§ 3.10.1.2 Contractor shall retain an independent scheduling expert to produce a comprehensive CPM Schedule for the Project and all required monthly updates.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to

submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. cooperate with the Architect and Construction Manager in scheduling and performing Contractor's work to avoid conflict, delay and/or interference with the work of other contractors or, the construction or operation of Owner's other forces.

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§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule. Owner shall have the right to require a Recovery Schedule. The detail and format of the Recovery Schedule shall be determined by Owner or the Construction Manager in consultation with the Architect.

...

§ 3.12.1.1 Shop Drawings shall include, notwithstanding any additional information required in trade sections: all working and erection dimensions; views as required to show fully all construction and fabrication methods, profiles and materials; all data on anchoring and relationship to other construction, sizes, types, finishes, and colors of material. Each sheet of Shop Drawings shall indicate name of project, applicable specification section, Contractor's stamp indicating approval, date of submittal, and any previous submittals.

...

§ 3.12.5.1 The Contractor shall indicate his checking and coordination of the information shown on Shop Drawings by stamping each sheet of the prints and originals.

§ 3.12.5.2 In addition, on one set of prints, the Contractor shall perform his review and indicate review of specific dimensions, notes, etc., by yellowing or checking the specific information.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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§ 3.12.8.1 Work performed contrary to this procedure shall be at the risk and expense of the Contractor. All Shop Drawings used for fabrication and erection shall be those approved by the Construction Manager and Architect, without change. If change is found to be necessary on any approved Shop Drawing, Product Data or Sample, it shall be resubmitted for approval of the Owner, Construction Manager and Architect.

...

§ 3.12.11 Contractor shall submit a Submittal Schedule within 15 days of Notice to Proceed. No Applications for Payment will be processed (i) until the Submittals Schedule has been submitted, and (ii) in the event that Contractor fails to provide Shop Drawings in accordance with the Submittal Schedule

§ 3.12.12 Shop Drawings shall be submitted in accordance with the Submittal Schedule electronically and accompanied by transmittal letter containing project name, Contractor's name, number of Drawings, titles, and other pertinent data.

§ 3.12.13 Unless otherwise specified, the Contractor shall submit Shop Drawings, in quantities, as specified in the Specifications.

§ 3.12.14 Samples, Shop Drawings, and Product Data will be returned to Contractor noted for action as specified in the Specifications.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner and the Construction Manager before using any portion of the site.

§ 3.13.3 The Contractor shall sign for and be held responsible for all keys or other access devices issued to it by the Owner for the Owner's facilities. Should the Contractor fail to return the keys or other access devices on the specified date, the Contractor shall be responsible for all resulting costs in accordance with the Owner's Policies, Rules or Regulations.

§ 3.13.4 The Contractor shall be responsible for obtaining proper parking permits for all vehicles which will be parked on site. All costs for parking permits and for fines due to improperly parked vehicles is the responsibility of the Contractor.

§ 3.13.5 The Contractor shall not park in any area not designated for vehicle parking unless given permission by the Owner to do so. It will be the responsibility of the Contractor to repair and/or reimburse the Owner for damages to the Owner's property caused by the Contractor's vehicles.

§ 3.13.6 The portion of the Owner's property that may be used by Contractor shall be agreed upon with the Owner and the Construction Manager clearly designated. Such portion may be changed from time to time during the course of the work. Trespass and encroachment on reserved space shall not be made.

§ 3.13.7 The Owner reserves the right to grant or to deny permission for the erection of signs or advertisements of any kind, including Project Sign, on the building, site enclosure or premises. The Contractor shall not display, or permit to be displayed, any sign, trademark, poster, or other advertising device, on or about the building, site enclosure or premises except as may be required for proper conduct of the work, as a directory of Contractors engaged in the work, for emergency, or as may be specified.

§ 3.13.8 The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents.

§ 3.13.9 All Contractors shall confine their use of the premises for all purposes, to the areas occupied by the construction and related storage areas.

§ 3.13.10 The Contractor shall make no shipments in advance of the required shipping date, unless there is adequate storage area at the site of the Work, or such area is provided by Contractor. Any such advance shipment shall not entitle Contractor to any payment prior to the time when such payment would otherwise be due, if the shipment were made on the scheduled shipping date.

§ 3.13.11 The Contractor shall send proper notices, make all necessary arrangements and perform all other services required in order to protect and maintain all marked identified or known public utilities such as fire lines and plugs, electric, gas, water lines, sewer pipes, mechanical systems and all other items of this nature, and assume all responsibility and pay all costs for which the Owner may be liable if said services are interrupted by actions of the Contractor or subcontractors. Contractor acknowledges that all public utilities or other infrastructure may not be identified or marked and Contractor has taken all reasonable precautions to identify all known and unknown utilities or other infrastructure.

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents, Documents, neatly done by mechanics settled in their trade, and to the satisfaction of the Architect and Construction Manager.

...

§ 3.14.3 Contractor shall not perform any cutting that will impair the strength of the structure. Any cutting that he

considers too extensive or that will impair the strength of construction, shall be reported to the Owner, Construction Manager and Architect.

§ 3.14.4 All work that may be cut, damaged, disturbed or otherwise interfered with during the progress of the work of the various trades shall be fully, properly and carefully patched, repaired and made good in a first class manner satisfactory to the Construction Manager and the Architect by the Contractor whose work has been cut or damaged and requires repair.

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

§ 3.15.1.1 The Contractor shall provide for the continual removal of rubbish and debris from the building until final completion of the Project and shall provide a dumpster on site, as required. Contractor shall also maintain 6 55-gallon drums (or equivalent) around the Project site for accumulation of trash. Contractor shall clean up the site on a daily basis, including the clean-up of all trash (including coffee cups, Styrofoam, insulation, etc.) and shall empty the 55-gallon drums as necessary and no less frequently than daily.

§ 3.15.1.2 Each Contractor shall sweep up and gather together daily, all his own rubbish and deposit same at a location(s) as directed in dumpsters provided by the Contractor.

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§ 3.16.2 The Contractor shall promptly notify the Owner, Construction Manager and Architect of the presence of hazardous conditions at the site, including the start of hazardous operations or the discovery or exposure of hazardous substances.

§ 3.16.3 All Contractors shall keep only necessary equipment on site and shall cooperate with the Owner regarding location of stored material. No Contractor shall be allowed to unreasonably encumber the Project site (or building) with equipment and stored material and shall afford other contractors reasonable opportunity for introduction and storage of their materials and for execution of other work.

§ 3.16.4 The Work under the Agreement shall not interfere with the Authority's operations.

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. ~~Such obligation-The Contractor shall also indemnify defend and hold the Owner harmless from and against any assertion of claims for mechanics' or construction liens or similar liens by any party that provided labor or materials for the Project except to the extent any such claims are the result of Owner's wrongful withholding of payment due under the Contract Documents.~~ The Contractor's obligations under this Section 3.18.1, shall not be construed to negate, ~~abridge-abridge~~, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. This indemnification shall not cover the sole negligence or willful misconduct of Owner. Contractor's obligations under this Section 3.18 shall arise at the time written notice of a claim is first provided to Owner regardless of whether claimant has filed suit on the claim. Contractor's obligations shall exist even if Owner is the only party sued by claimant. The obligations of Contractor under this Section 3.18.1 shall survive the expiration or earlier termination of the Contract and shall bind Contractor for itself, successors and assigns.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. To the extent permitted by law, Contractor, for itself, its successors and assigns, hereby expressly agrees to waive any provision of the applicable State's Workers' Compensation Act, including Section 303(b), whereby the Contractor could preclude its joinder as an additional defendant or avoid liability for damages.

§ 3.18.3 The Contractor's indemnity obligations under this Paragraph 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees) and punitive damages (if any) arising out of, or in connection with any (i) violation of or failure to comply with any law, statute, ordinance, rules, regulation, code, or requirement of a public authority that bears upon the performance of the work by the Contractor, a subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

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

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§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Documents, unless otherwise modified by written agreement in accordance with other provisions of the Agreement.

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§ 4.2.8 The Architect and Construction Manager ~~have authority to will~~ reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

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§ 5.1.3 A Supplier is a person or entity who has a direct or indirect contract with the Contractor, Subcontractor or Sub-subcontractor to furnish materials or equipment for the Work. The term "Supplier" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Supplier or an authorized representative of the Supplier.

§ 5.1.4 The term "Specialist" or "Specialty Contractor" as used in these specifications shall mean an individual or firm of established reputation, or, if newly organized, whose personnel have previously established a reputation in the same field, which is regularly engaged in, and which maintains a regular force of workmen skilled in either manufacturing or fabricating items required by the Agreement, installing items required by the Agreement, or otherwise performing

work required by the Agreement. Where the Agreement Specifications require installation by a "Specialist", that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision. All other requirements and provisions contained in these documents pertaining to subcontractors and Sub-subcontractors are applicable to Specialty Contractors.

~~§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, Within 20 days of Notice to Proceed, the Contractor shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.~~

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§ 5.3.2 Where Contractor subcontracts portions of the Work, the entire responsibility for the subdividing of Work rests with the Contractor except where undivided responsibility is specified. The Owner and Architect are not responsible for the manner of the subdivision of the Work and neither will enter into or settle disagreements or disputes between Contractor and Subcontractor.

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~~When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.~~

~~§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.~~

~~§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.~~

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§ 7.1.1.1 A Field Directive is a directive issued by Construction Manager to proceed with a portion of the Work, when the directive is non-material, has no impact on Contract Sum or Contract Time (the "Field Directive"). The Contractor shall have no claim as a result of the Field Directive unless it shall, prior to complying with same and in any event no later than five (5) working days from the date such direction or order was given, submit to the Owner for the Owner's approval its change proposal.

§ 7.1.1.2 When submitting its change proposal, the Contractor shall include and set forth in clear and precise detail breakdowns of labor and materials for all trades involved and the estimated impact on the construction schedule, based upon an impact analysis of the current schedule. The Contractor shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets if requested of any Subcontractors.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, Field Directive or order for a minor change in the Work.

§ 7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order, Construction Change Directive or Field Directive that

application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.1.5 Prior to submitting a Change Order, Contractor shall deliver to Owner, Construction Manager and Architect a proposal to resolve the outstanding issue through a no cost solution to resolve the problem. If Contractor, Architect and Construction Manager mutually decide there is no reasonable no cost solution, Contractor may proceed with the Change Order process

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§ 7.2.2 The methods used in determining adjustments to the Contract Sum shall be acceptable to the Architect, the Construction Manager and Owner and may include those listed in Paragraph 7.3.3.

§ 7.2.2.1 The Architect, Construction Manager and Owner require itemized pricing certifications on all change order proposals from the Contractor, subcontractors and sub-subcontractors regardless of their tier, including detailed line item estimates showing materials take-offs, materials prices by item and related labor-hour pricing information and extensions (by line item or by drawing, as applicable).

§ 7.2.2.2 No separate allowances for warranty expense will be allowed as a direct cost of a change order.

§ 7.2.2.3 Estimated materials costs shall reflect the Contractor's reasonably-anticipated actual net cost of the purchase of the materials needed for the change order work. Estimated materials costs shall reflect cost reductions available due to trade discounts, free materials credits, and/or volume rebates "Cash" discounts available on materials purchased for change order work shall be credited to the Owner if the Owner provides such cash to the Contractor in time for the Contractor to take advantage of any such cash discounts. Price quotations from materials suppliers must be itemized with unit prices for each specific item to be purchased. "Lot Pricing" quotations will not be considered sufficient substantiating detail.

§ 7.2.2.4 Estimated labor costs shall be based on the actual cost per hour paid for those workers who the Contractor reasonably anticipates will perform the change order work.

§ 7.2.3 In Section 7.2.1.2 above, the allowance for overhead and profit combined, included in the total cost to the Owner, shall be based on the schedule contained in Section 7.3.10.1 through 7.3.10.5, and shall be indicated as separate line items on the Contractor's Cost Breakdown.

§ 7.2.4 The Contractor agrees it is responsible to submit accurate, correct and complete cost and pricing data to support its change order proposals or other contract price adjustments under the Agreement. The Contractor agrees that any designated Owner's representative will have the right to examine the records of the Contractor to verify the accuracy and the appropriateness of the pricing data used to price change order proposals.

§ 7.2.5 When a Change Order involves both additions and deletions in material, the net quantity is to be determined and the appropriate overhead and profit is to be applied to the net quantity.

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§ 7.3.11 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, hours, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above; labor costs shall be actual costs (wages and benefits), not standardized billing rates. Where major cost items are subcontracts, they shall be itemized also. Labor hours shall be completely broken down. In no case will a change involving over \$1,500.00 be approved without such itemization.

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§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. Contract Time shall commence as of the date of the Notice to Proceed unless otherwise specified in the Agreement. However, the Work to

be performed under this Agreement shall not commence until the required insurance has been obtained and approved. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

...

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined, shall mean a calendar day of twenty-four (24) hours beginning at 12:00 Midnight. The term "working day" (or "business day") shall mean any calendar day except Saturdays, Sundays and legal holidays at the place of the Project. A time limit ending on a weekend or holiday shall be automatically extended to the succeeding working day.

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§ 8.2.4 The Architect in coordination with the Construction Manager will set work hours. Contractor will be required to work nights, weekends, or holidays as necessary to complete the work in accordance with the Schedule.

NOTE: Standard work hours for this project may be affected by local Noise Ordinance. Contractor shall be responsible to adhere to the Noise Ordinance, including night, weekend and holiday work. All utility shut downs, interruptions, work in or adjacent to an existing building will be coordinated through the Construction Manager and may have to be performed during dictated hours.

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration, or by other causes that the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Time at Owner's sole option, the Contractor shall: (a) be entitled to an extension of the Contract Time; (b) be ordered by the Owner to accelerate the schedule to make up the lost time comprising the delay, including second shift work; or (c) a combination of (a) and (b), which shall be memorialized by Change Order, subject to the provisions of this Article 8.3.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. ~~Intentionally Deleted.~~

§ 8.3.3 ~~This Except as set forth herein, this Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~

§ 8.3.4 Where the cause of delay is due to weather conditions, extension of time shall be granted only for unusually severe weather, as determined by reference to historical data. The term "historical data" as used in the preceding sentence shall be construed according to this formula: Average rainfall (or snow or extreme low temperature) for the past five (5) years for the month in question, plus twenty (20) percent. In other words, weather is not deemed to be unusually severe unless it is twenty (20) percent worse than the average for that month over the last five years.

§ 8.3.5 No payment or allowance of any kind or extension of time shall be made to the Contractor as compensation for damages on account of hindrance or delay from any cause in the progress of the Work, when the Architect, Construction Manager or Owner determines the delay to be: (i) avoidable; (ii) caused in whole or in part by Contractor's negligence or intentional misconduct; or (iii) to be Contractor's fault (in whole or in part) for the delay, including but limited to any delay attributable to lack of coordination or cooperation by or between the Contractor and his Subcontractors.

§ 8.3.6 The Owner shall have the right to defer the beginning or to suspend in whole or in any part, of the Work herein contracted to be done, whenever, in the opinion of the Owner, Construction Manager or Architect, it may be necessary or expedient for the Owner to do so. If the Contractor is delayed in completion of the Work by a reason not set forth in Section 8.3.5, then for all such delays and suspensions the Contractor shall be entitled to compensation for the delay in accordance with Section 8.3.6.2.

§ 8.3.6.1 The Contractor shall not be entitled to make a claim for delay (regardless of the cause of the delay) unless within two (2) business days after the beginning of such delay or delays, Contractor files a written request providing

notification of the delay (including specific explanation as to the cause) with the Architect, Construction Manager and Owner. In case of a continuing cause of delay, only one request is necessary.

§ 8.3.6.2 Notwithstanding anything else contained herein, Contractor's remedy for the Owner's negligence, bad faith, active interference, tortuous conduct, or other reasons un contemplated by the parties that delay the Contractor's performance, Contractor shall be entitled to an extension of the Contract Time and for such additional compensation as determined by the Owner. The Owner may also order the Contractor to accelerate the schedule to make up the lost time comprising the delay, including second shift work and for additional compensation as determined by the Owner which shall be memorialized by Change Order subject to the provisions of this Article 8.3.

§ 8.4 COMPLETION AND LIQUIDATED DAMAGES

§ 8.4.1 The Contractor shall achieve Substantially Completion of all the Work included in the Contract Documents ready for the Owner's utilization and occupancy as defined in Section 8.1.3 of the General Conditions within the time required by this Contract.

§ 8.4.2 Pursuant to the provisions of Section 8.4.1, for each calendar day delay in either (a) Substantial Completion of the Work or (b) any of the milestones for the Project as set forth in the Contract Documents and as set forth on Contractor's Form of Proposal, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty, the sum set forth of as noted in the Form of Proposal, the Specifications (Summary of Work) and as set forth on Contractor's Form of Proposal and each Contractor and its surety shall be liable for the amount thereof and the sum may be deducted by the Owner from any monies outstanding.

§ 8.4.3 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work required in this Contract shall be commenced on a date to be specified in the "Notice to Proceed".

§ 8.4.3.1 The Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within a reasonable time for the completion of the same, taking into consideration the average climatic change and usual industrial conditions prevailing in this locality.

§ 8.4.4 If the said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the Owner the amount specified, not as a penalty but as Liquidated Damages, for each and every calendar day that the Contractor shall fail to achieve Substantial Completion.

§ 8.4.4.1 The amount of the Liquidated Damages has been fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain should the Contractor not achieve Substantial Completion by the required date.

§ 8.4.4.2 It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for performance of any act whatsoever; and where under the Contract an additional time is allowed for completion of any task or the Work, the new time limit, fixed by such extension should shall be of the essence of this Contract.

§ 8.4.5 If job progress has been adversely affected by the non-attendance of any Contractor at a scheduled job meeting of which he has been duly notified, such adverse effect shall be considered as job delay; and the Contractor shall be subject to payment of damages to the Owner in an amount not to exceed \$1,000.00 for each occurrence, unless the Contractor was excused by the Construction Manager prior to the meeting and the Owner shall have the right to deduct this from any payments due Contractor.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier unless such Work has been performed by others whom the Contractor intends to pay. Application for Payment shall be prepared on the standard AIA Application for Payment Form G702 and shall be submitted with five (5) copies.

§9.3.1.3 With each Application for Payment, the Contractor shall (i) Certify that the Application for Payment represents a just estimate of Work performed and material supplied during the period covered by the Application for Payment; (ii) Certify that there are no known construction liens outstanding at the date of the Application for Payment, except for such bills not paid but so included there is no known basis for the filing of any construction liens on the Work and that waivers from all Subcontractors and all material suppliers have been obtained in such form as to constitute an effective waiver of lien under applicable state laws; (iii) Provide Contractor's waiver of lien for all amounts requested in such Application for payment; (iv) Provide waivers of lien from each Subcontractor, Sub-subcontractor, material supplier, and all other parties that provided labor or material for which payment was requested under previous Applications for Payment and that also have statutory lien rights; (v) Provide any other information reasonably requested by Owner or Owner's title insurance company as a prerequisite for such title insurance company to insure over mechanic's liens, construction liens and all other similar liens attributable to the Work covered by the applicable Application for Payment; and (vi) evidence that any union wages and benefits are current.

§ 9.3.1.4 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises where the Work is being performed, by any person claiming that the Contractor or any Subcontractor or other person under it has failed to make payment for any labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or if the Contractor or any Subcontractor or other person under it causes damage to the Work or to any other work on the Project and Contractor fails to rectify same in a timely manner and within no later than 30 days, the Construction Manager and Architect may withhold certification of payment and Owner shall withhold payment which the Architect in consultation with the Construction Manager shall deem sufficient to (1) satisfy, discharge, and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate the Owner for and indemnify it against any and all losses, liability, damages, costs and expenses, including reasonable attorneys' fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes. If such amount is insufficient therefor, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 9.3.2 ~~Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment~~ Payments on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. ~~site, or at some other location agreed upon in writing, will be made by the Owner subject to the following conditions:~~

§ 9.3.2.1 Such materials or equipment shall have been fabricated or assembled specifically for the Project and delivered to storage no earlier than needed for the orderly progress of the Work as demonstrated by the Progress Schedule. Nothing herein contained is to limit or prejudice the right of the Owner to undertake claim for damages due to delay in delivery and installation of any such material or equipment prepaid prior to the delivery by Contractor.

§ 9.3.2.2 Title to such materials or equipment shall pass to the Owner pursuant to the Contractor's bill of sale which shall contain guarantee of replacement thereof in the event of damage thereto or disappearance thereof due to any cause. The Contractor shall also affirm that he will pay for such materials or equipment immediately upon receipt of payment from the Owner.

§ 9.3.2.3 In the case of off-site storage, the Contractor shall also provide Consent of Surety to such payment and insurance of such materials or equipment against the perils set forth in Article 11, both while in storage and during transportation to the site.

§ 9.3.2.4 Raw materials or other materials or equipment readily duplicated or usable on other projects will be paid for only after the materials are incorporated in the construction.

§ 9.3.2.5 Partial or complete payment for materials and equipment stored either on or off site shall not be construed as relieving the Contractor of its responsibility for the care and protection of such materials and equipment used. Contractor shall be responsible for any and all damage to such materials and equipment occurring prior to the incorporation of such materials and equipment into the Work on the Project Site and Owner shall have the right in addition to all other remedies available to Owner under the Contract to reject any such materials and equipment damaged prior to the incorporation thereof in to the work on the project site. Materials and equipment stored either on or off site requiring protection from weather, heat, cold or moisture shall be suitably protected by Contractor as required by the material manufacturer. The materials and equipment shall be labeled as the property of the Owner and shall be accessible to the Owner for inspection at all times and shall be segregated from other materials and equipment at the storage facility. If the Contractor requests payment for material stored either on or off site, Owner shall be entitled to receive, at the minimum, the following prior to make payment: (i) receipt of a Bill of Sale; (ii) proof of suitable and convenient storage, and (iii) receipt of a certificate of insurance naming the Owner as loss payee which insurance should cover the stored materials in an amount equal to the full replacement value of such materials.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work by incorporation of the Work into the construction and upon receipt of payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances. The Contractor further agrees that receipt of payment for any Application for Payment shall, upon receipt of such payment and to the fullest extent permitted by law, be conclusively deemed to waive all liens with respect to said Work, materials and labor to which the Contractor then may be entitled; provided, however, that in no event shall such waiver of lien rights waive right to payment for said Work, materials and labor.

§ 9.3.4 Each Application for Payment or periodic estimate requesting payment must be accompanied by a certification that each subcontractor, vendor or supplier has been paid all amounts due him on the basis of the previous periodic payment to the Contractor, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Contractor shall be required to furnish his own written explanation.

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§ 9.5.1 The Construction Manager or Architect may ~~decide not to certify payment and shall~~ withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also ~~withhold a Certificate~~ ~~decide not to certify~~ for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is ~~responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of~~ responsible

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.2 ~~third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;~~

...

.7 ~~repeated failure to carry out the Work in accordance with the Contract Documents.~~

.8 ~~failure to maintain the site in a safe and satisfactory manner in accordance with construction practices as determined by the Owner or Architect;~~

.9 ~~any labor strike or labor disruption whatsoever which impacts the progress of the Work;~~

.10 failure to maintain Record Drawings.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default due to withholding payment while any of the above grounds remains uncured.

§ 9.5.3 ~~If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager and both will reflect such payment on the next Certificate for Payment. Contractor disputes any determination of the Construction Manager or Architect with respect to any Application for Payment, the Contractor shall nevertheless continue to diligently prosecute the Work. In no event shall the Contractor stop Work, except pursuant to Section 9.7 hereof.~~

...

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect. Owner shall comply with the New Jersey Prompt Payment Act when making payments, subject to Section 5.1.10 of the AIA A132.

§ 9.6.2 The Contractor shall pay each Subcontractor, ~~no later than seven~~ within ten (10) calendar days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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~~§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~

§ 9.7 Failure of Payment

~~If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.~~

§ 9.7.1 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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§ 9.9.1.1 It shall be mutually understood and agreed that such occupancy does not relieve the Contractor from completing the Work within the time period specified.

§ 9.9.1.2 The occupancy of any portion of the building does not constitute an acceptance of any work as the Project will be accepted as a whole and not in units.

§ 9.9.1.3 Further, such occupancy alone shall not determine when Substantial Completion has been reached.

§ 9.9.1.4 Substantial Completion shall be as defined in Sections 9.8.1 and 9.8.2 of these AIA General Conditions

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor and Architect shall jointly inspect-visit the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Prior to such occupancy; however, the Architect, a representative of the Owner, and the Contractor shall fully review the portions of the building to be occupied and Architect shall prepare a complete punch list of omissions of materials, faulty workmanship, or any items to be repaired, torn out or replaced.

§ 9.9.3 Unless otherwise agreed upon, upon in writing by the Owner, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

...

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Document shall be assembled and delivered by the Contractor to the Construction Manager as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Construction Manager, Architect and Owner until all warranties and guarantees have been received and approved by the Construction Manager, Architect and Owner.

§ 9.10.1.1 Should the Project require inspections beyond the inspections noted herein i.e. substantial completion, substantial completion verification and final inspection, the Owner will retain the right to reduce from the Contractor's final payment those monies necessary to provide for the cost of the additional inspections. The reduction shall not be considered as a part of any "Liquidated Damages" for failure to complete the Work within the specified Contract Time, nor shall the reduction be considered as a penalty to the Contractor; but shall be for the actual cost of monies required for the reimbursement of fees for the Architect, Construction Manager, Owner and any other specialists necessary for obtaining final approval of the Work.

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§ 9.10.2.1 The Contractor shall deliver to the Construction Manager, for delivery to the Owner, before final payment is due on the Contract, all required written guarantees/warranties in form acceptable to the Architect properly sworn to and signed by a responsible officer of the Contractor's firm, warranting all work and materials included in his Contract against all defects not due to ordinary wear and use for a period of two (2) years from the Substantial Completion unless the Contract Documents require a longer date.

~~§ 9.10.4~~ The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
~~.1~~ —liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
~~.2~~ —failure of the Work to comply with the requirements of the Contract Documents; or
~~.3~~ —terms of special warranties required by the Contract Documents.Intentionally Deleted.

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~~.5~~ the general public

...
§ 10.2.3.1 Contractor shall comply with all applicable provisions of governing agencies (State, Federal & Municipal). All machinery, openings, excavations and other physical hazards shall be guarded in accordance with OSHA requirements. In case of conflicts, the most stringent restrictions will apply.

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In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.4.1 In an emergency not due to Contractor's negligence or wrongful act(s) affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.4.1.1 The Contractor and each Subcontractor shall report immediately to the Architect, Construction Manager and/or Owner's Representative every accident to persons or damage to property and shall furnish in writing full information, including testimony of witnesses regarding any and all accidents. In addition, the Contractor shall complete the Architect's and/or Owner's accident report form within 24 hours of the accident and submit it to the party designated by the Owner.

§ 10.4.2 Accidents: The Contractor shall provide such equipment and facilities as are necessary or required, in case of accident, for first-aid service to anyone who may be injured in the progress of the Work and he shall have standing arrangements for the removal and hospital treatment of any employee who may be injured or who may become ill.

...
§ 11.1 Contractor's Liability Insurance**GENERAL INSURANCE REQUIREMENTS**

§ 11.1.1 The Contractor shall not commence work until the Contractor has obtained at the Contractor's own expense all of the insurance required hereunder and such insurance has been provided to the Owner; nor shall the Contractor allow any subcontractor to commence work on any subcontract until all insurance required of the Subcontractor has been so obtained and approved by the Contractor and the Contractor and Subcontractors shall submit to the Owner of original certificates of insurance signed by authorized representatives of the insurers or, at the Owner's request, certified copies of the required insurance policies.

§ 11.1.2 Insurance as required hereunder shall be in force throughout the term of the Contract and for one (1) year after final acceptance of the Project by Owner in accordance with Section 11.1.12.iv. Original certificates signed by authorized representatives of the insurers or, at the Owner's request, certified copies of insurance policies, evidencing that the required insurance is in effect, shall be maintained with the Owner throughout the term of the Contract and for

one (1) year after final acceptance of the Project by Owner.

§ 11.1.3 The Contractor shall require all Subcontractors to maintain during the term of the Contract commercial general liability insurance, business auto liability insurance, and workers' compensation and employer's liability insurance (and umbrella excess or excess liability insurance) to the same extent required of the Contractor in Sections 11.1.12, 11.1.13, 11.1.14 and 11.1.15 unless any such requirement is expressly waived or amended by the Owner in writing. The Contractor shall furnish Subcontractors' certificates of insurance prior to the Subcontractor's commencement of Work at the Property and from time to time upon request, which shall demonstrate that Subcontractors are naming Owner and the other parties required by Section 11.1.19 as additional insured on a primary and non-contributory basis.

§ 11.1.3.1 Furnish, in duplicate, certificates herein called for and specifically set forth evidence of all coverage required by Sections 11.1.12, 11.1.13, 11.1.14, 11.1.15, 11.1.16, 11.1.17 and 11.1.18 and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

§ 11.1.4 All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation, non-renewal or material reduction in coverage until sixty (60) days prior written notice has been given to the Owner.

§ 11.1.5 No acceptance and/or approval of any insurance by the Owner shall be construed as relieving or excusing the Contractor or the Contractor's Surety from any liability or obligation imposed upon either or both of them by the provisions of this contract.

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 — Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 — Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 — Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 — Claims for damages insured by usual personal injury liability coverage;
- .5 — Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 — Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 — Claims for bodily injury or property damage arising out of completed operations; and
- .8 — Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.6 It is recognized that in some instances that insurance may be acceptable which is underwritten by an insurance company that is not reported in the A.M. Best Rating Guide, or the coverage is extended under a self-insured program. This insurance, or self-insurance, must be in conformity with the rules and regulations of the Commissioner of Insurance of the State of New Jersey. Any insurance or self-insurance of this type is subject to the review and acceptance by the County Risk Manager or the County Counsel. Furthermore written proof of acceptability by the Office of the Commissioner of Insurance may be necessary.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.7 All required insurance coverages must be underwritten by insurers allowed to do business in the State of New Jersey and acceptable to the Owner. The insurers must also have a policyholders' A.M. Best Company Financial Strength Rating (FSR) of "A" or better, and be Financial Size Category (FSC) of "VII" or higher in accordance with the latest evaluation by A.M. Best Company, unless Owner grants specific approval for an exception.

§ 11.1.8 Any deductibles or retentions in excess of \$10,000 shall be disclosed by the Contractor, and are subject to Owner's written approval. Any deductible or retention amounts elected by the Contractor or imposed by the Contractor's insurer(s) shall be the sole responsibility of the Contractor.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

§ 11.1.9 Any and all return premiums and/or dividends for insurance coverage directly charged to the Owner by the Contractor in connection with this Contract shall belong to and be payable to the Owner.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Construction Manager, the Construction Manager's consultants, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.10 If the Owner is damaged by the failure or neglect of the Contractor to purchase and maintain insurance as described and required herein, without so notifying the Owner, then the Contractor shall bear all costs properly attributable thereto.

§ 11.1.11 The Contractor shall purchase and maintain the following insurance coverages which will insure against claims which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Insurance shall be written for not less than the limits specified below or required by law, whichever is greater.

§ 11.1.12 Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:

- \$1,000,000 each occurrence;
- \$1,000,000 personal and advertising injury;
- \$2,000,000 general aggregate per project;
- \$2,000,000 products/completed operations aggregate;
- \$100,000 damage to rented or lease properties; and
- \$5,000 medical expense.

This insurance shall include coverage for all of the following:

- i. General aggregate limit applying on a per-project basis;
- ii. Liability arising from premises and operations;
- iii. Liability arising from the actions of independent contractors;
- iv. Liability arising from products and completed operations with such coverage to be maintained for two (2) years after completion of the Work;
- v. Contractual liability including protection for the Contractor from bodily injury and property damage

- claims arising out of liability assumed under this Contract; and
vi. Liability arising from the explosion, collapse, or underground (XCU) hazards.

§ 11.1.13 Business auto liability insurance or its equivalent with a minimum limit of \$1,000,000 per accident and including coverage for all of the following:

- i. Liability arising out of the ownership, maintenance or use of any auto whether owned, hired/leased or non-owned;
ii. Automobile contractual liability; and
iii. endorsed to include pollution coverage.

§ 11.1.14 Workers' compensation insurance or its equivalent with statutory benefits as required by any State or Federal law, including "other states" coverage; employer's liability insurance with minimum limits of:

- \$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease; and
\$1,000,000 policy limit for bodily injury by disease.

§ 11.1.15 Umbrella excess liability or excess liability or its equivalent to be purchased by Contractor and Sub-Contractors with minimum limits:

Contractor:
(\$10,000,000) per occurrence;
(\$10,000,000) aggregate for other than products/completed operations and auto liability and
(\$10,000,000) products/completed operations aggregate.

Sub-Contractor:
(\$5,000,000) per occurrence;
(\$5,000,000) aggregate for other than products/completed operations and auto liability and
(\$5,000,000) products/completed operations aggregate.

And including all of the following coverages which shall, in each instance, be at least as broad as the underlying coverage, on the applicable schedule of underlying insurance:

- i. Commercial general liability;
ii. Business auto liability; and
iii. Employer's liability.

§ 11.1.16 Pollution liability including to be purchased by Contractor and the following Sub-Contractors (demolition, foundation, grading, excavation and concrete) with minimum limits:

\$1,000,000 per pollution incident;
\$3,000,000 annual aggregate

During the life of this contract the Contractor shall procure and maintain Pollution Liability Insurance with limits of liability not less than \$1,000,000 per pollution incident and \$3,000,000 annual aggregate. This insurance shall provide coverage pollution incidents that cause bodily injury, including death; loss or damage to property, including loss of use of damaged property or of property that has not been physically injured; cleanup and monitoring costs; and costs and expenses incurred in the investigation, defense, or settlement of claims. If coverage is on "claims made" basis, Contractor must maintain comparable coverage and limits for a minimum of four (4) years following the expiration date of said contract.

§ 11.1.17 Owners and Contractors Protective Liability Coverage to be purchased by Contractor in the amount of \$5,000,000 per occurrence. This insurance shall provide coverage for bodily injury, including death; loss or damage to property, including loss of use of damaged property or of property that has not been physically injured; cleanup and monitoring costs; and costs and expenses incurred in the investigation, defense, or settlement of claims. This coverage shall be maintained in force for the full period of this agreement.

§ 11.1.18 Intentionally deleted.

§ 11.1.19 Owner and Construction Manager, and their elected and appointed officials, officers, consultants, agents, employees, and assigns, and the Architect and their officers, consultants, agents, and employees, and assigns shall be named as additional insureds on the Contractor's commercial general liability insurance and umbrella excess or excess liability insurance policies with respect to liability arising out of the Contractor's products, installation, and/or services provided under this Contract. Such coverage shall extend to cover the additional insureds for liability arising out of the following:

- i. Ongoing operations;
- ii. Owner's general supervision and/or services as provided by the Contractor under this Contract; and
- iii. Products and completed operations.

The commercial general liability policy and the umbrella liability or excess liability policies, if required herein, must include additional insured language in i., ii., and iii., as follows:

"This policy is endorsed to include as insureds Owner, Construction Manager, Cumberland County, and the County's elected and appointed officials, officers, consultants, agents and employees, but only for liability arising out of 'your product' or 'your work' for the Owner by or for you."

Special note: The policy must include CG2010 ed. 10 01 and CG2037 ed. 10 01.. A manuscript endorsement with the above wording is required. Copy of the endorsement is to be included with all certificates of insurance.

§ 11.1.20 Insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees under any Contractor's liability insurance or self-insurance required herein, including, but not limited to, umbrella or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or self-insurance. (Any cross suits or cross liability exclusion shall be deleted from Contractor's liability insurance policies required herein.)

§ 11.1.21 Insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees as specified herein shall be primary, and any other insurance, self-insurance, coverage or indemnity available to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees shall be excess of and non-contributory with insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees as specified herein.

§ 11.1.22 If any liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions:

§ 11.1.22.1 The Contractor shall agree to provide certificates of insurance evidencing the above coverages for a period of one (1) year after final payment of the Contract. Such certificates shall evidence a retroactive date no later than the beginning of the Work under this Agreement; or

§ 11.1.22.2 The Contractor shall purchase, at his own expense, an extended (minimum three (3) years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the Work under this Agreement. Proof of extension shall annually be presented to the Owner.

§ 11.1.23 All Certificates of Insurance shall be submitted when required by the Contract Documents, but in no event later than the commencement of Work. The Certificates of Insurance shall be subject to review by the Owner and shall show the Certificate Holder as follows:

Cumberland County College
3322 College Drive
Vineland, New Jersey 08362

Certificates of Insurance not reading as per above will not be acceptable and delay contract approval.

Questions regarding these insurance requirements may be directed to Cumming Corp. at (908) 516-7016

Certificates showing insurance companies with A.M. Best rate which have been reduced below the minimum required "A:VII" WILL NOT BE ACCEPTED.

It is suggested that any Contractor or subcontractor, before submitting a Certificate of Insurance to Owner, check with their insurance agent to assure that the Insurance Company shown on their certificate has a proper spread of risk, soundness of reinsurance, quality of assess, adequacy of loss reserves and experience of management which qualifies it to receive the A.M. Best Rate as described in the Owner's Insurance Requirements.

§ 11.2 Owner's Liability Insurance**OWNER'S LIABILITY INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. § 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance, or solely at the Owner's option, the Owner may self-insure the Owner's liability exposures.

§ 11.3 Property Insurance**Intentionally deleted.**

~~§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~

~~§ 11.3.1.1 Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss.~~

§ 11.4 BUILDER'S RISK INSURANCE (OWNER TO PURCHASE)

~~§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

§ 11.4.1 The Owner shall purchase and maintain builder's risk insurance on a replacement cost basis with a limit at least equal to the initial Contract Sum. This insurance shall be maintained until final acceptance of the Project by the Owner or until no person or entity other than the Owner has an insurable interest in the covered property, whichever is earlier. This builder's risk insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as set forth in Owner's builders risk policy.

§ 11.4.2 Insurance shall be on an "all-risk" or equivalent policy form and shall insure against the perils of fire, extended coverage, theft, vandalism, malicious mischief, collapse and windstorm. Coverage is to apply for debris removal including demolition occasioned by a covered loss. This insurance shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such covered loss. Coverage for other perils

such as flood and earthquake or for loss caused by the enforcement of any applicable ordinance or law shall not be required unless otherwise provided in the Contract.

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

§ 11.4.3 This builder's risk insurance shall cover all of the following types of property:

- i. All structures to be constructed, under construction, and/or already constructed;
- ii. All materials, equipment, machinery and supplies which are to be incorporated into the Project; and
- iii. Temporary structures of any nature whatsoever.

~~§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

§ 11.4.4 The Contractor shall be responsible for payment of any deductibles applicable under this builder's risk insurance, boiler and machinery insurance or other property insurance applicable to this Project.

~~§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

§ 11.4.5 Unless otherwise provided in the Contract Documents, this builder's risk insurance shall cover materials to be incorporated into the Work and the Project which are off the site, and also such materials in transit.

~~§ 11.3.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~

§ 11.4.6 The Owner and Contractor waive all rights against each other and against the Architect, Owner's Representative, Owner's other Contractors and own forces described in Article 6, if any, and the Subcontractors, sub-subcontractors, elected and appointed officials, officers, agents, employees and consultants of any of them, for property damage to or loss of use of the Work to the extent that such property damage or loss of use is covered by this builder's risk insurance, boiler and machinery insurance or other property insurance applicable to the Work. The policies shall provide such waivers of subrogation by endorsement or otherwise.

~~§ 11.3.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

§ 11.4.7 Any loss covered under this builder's risk insurance, boiler and machinery insurance or other property insurance applicable to the Work shall be payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to any mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractors, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payment to their Sub-subcontractors in similar manner.

~~§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

§ 11.4.8 Owner, as fiduciary, shall have the power to adjust and settle a loss with insurers.

~~§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

§ 11.4.9 The builders risk insurance required by this Section 11.4 is not intended to cover machinery, tools or equipment owned or rented by the Contractor, or its Subcontractors, which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor and its Subcontractors shall, at their own expense, purchase and maintain property insurance coverage for owned, leased, or rented machinery, tools or equipment. The Contractor and its Subcontractors hereby waive all rights against the Owner and its elected and appointed officials, officers, agents, employees and consultants for property damage to or loss of use of such machinery, tools or equipment to the extent that such property damage or loss of use is covered by the Contractor's or Subcontractor's property or equipment floater insurance or other similar property insurance maintained by the Contractor or its Subcontractors. The policies shall provide such waivers of subrogation by endorsement or otherwise.

~~§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~§ 11.3.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees each of the other, and (2) the Construction Manager, Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

~~§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.~~

§ 11.5 PERFORMANCE BOND, PAYMENT BOND and MAINTENANCE BOND REQUIREMENTS

~~§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

§ 11.5.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds shall be obtained from a company lawfully authorized to do business in the State of New

Jersey and have an A.M. Best and Company rating of "A" or better; and the cost of all of the bonds shall be included in the Contract Sum. The amount of each bond shall be equal to 100 percent of the Contract Sum.

~~§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction of the arbitrators.~~

§ 11.4 Performance Bond and Payment Bond

§ 11.5.2 The Contractor shall deliver the required payment and performance bonds to the Owner in accordance with the Contract Documents.

~~§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~

~~§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~

§ 11.5.3 The Contractor shall post a two (2) year Maintenance Bond covering 100 percent of the Contract Sum after acceptance of the Work by Owner and prior to the release of the Payment and Performance Bond.

§ 11.5.4 The Contractor shall require the attorney who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney, indicating the monetary limit of such power.

§ 11.5.5 The Contractor shall provide Owner and Architect with the name, address, phone number and other contact information of the local agent of the Company issuing the Project bonds.

§ 11.6 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, the Construction Manager and their consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.6 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.6.1 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.6. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.6.2 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, post a bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance

with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.6.3 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

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If the Owner prefers to accept Work ~~that~~ which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the ~~Contract Sum will be reduced as Owner will have the right to deduct such sum, or sums, of money from the amount of the Contract Sum as it determines to be appropriate and equitable.~~ Such adjustment shall be effected whether or not final payment has been made.

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The Contract shall be governed by the law of the place where the Project is ~~located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ located.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither~~ Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

~~§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.~~

...

§ 13.4.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents.

...

§ 13.5.1.1 When work has been installed contrary to any contract requirement and the Contractor requests the privilege of testing in lieu of removal, such testing shall be at the Contractor's expense.

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§ 13.5.7 Inspections and Tests required to establish compliance with the Contract Documents and specified to be "by Owner", will be made by an independent testing agency selected and paid for by the Owner. Retesting required as a result of first test showing non-compliance with the Contract Documents will be performed by the same agency, with

costs paid for by the Contractor. Representatives of the testing agency shall have access to the Work at all times. The Contractor shall provide facilities for such access in order that the agency may properly perform its function.

§ 13.5.8 The independent agency, employed by the Owner, shall prepare the test reports, logs and certificates applicable to the specific inspection and test and promptly deliver the specified number of copies of same to the designated parties. Other required certificates of inspections, testing, or approval shall be secured by the Contractor and delivered by Contractor to the Architect and/or Construction Manager, in such time as not to delay progress of the Work of final payment thereof.

...

§ 13.6.1 The Contractor shall not be entitled to any payment of interest for any reason, action or inaction by the Architect or the Owner.

§ 13.6.2 Any payments withheld for time delays, faulty materials, or workmanship, or any other reason provided by this Contract, shall not bear interest for period of delay or non-acceptance.

§ 13.7 Time Limits on Claims Intentionally Deleted.

§ 13.8 NEW JERSEY PREVAILING WAGE ACT

§ 13.8.1 This project is subject to the provisions of the New Jersey Prevailing Wage Act and the general prevailing minimum wage for each craft or classification as determined by the Commissioner of the New Jersey Department of Labor and Workforce Development.

§ 13.9 DISCRIMINATION PROHIBITED

§ 13.9.1 In compliance with NJSA 10:2-1 et seq. agrees:

§ 13.9.1.1 a. In the hiring of persons for the performance of work under this contract by the Contractor or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates; b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex; c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

The Owner and the Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and the Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7. § 13.9.1.2 That this Contract may be cancelled or terminated by the government agency and all money due, or to become due under the Contract, may be forfeited for a violation of the terms or conditions of that portion of the Contract.

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§ 14.1.1 The Contractor may terminate the Contract if the all Work is stopped for a period of ~~30~~ sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

- ~~.3~~ Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- ~~.4~~ or
- ~~.3~~ The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

~~§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less. If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work properly executed and for payment of costs directly related to Work thereafter performed by Contractor in terminating the Contract, including reasonable demobilization and cancellation charges, proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit thereon.~~

~~§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~

~~§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~

~~§ 14.1.3. If all of the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.2.~~

~~§ 14.2.1 The Owner may terminate the Contract after providing Contractor with seven (7) days' notice and opportunity to work ("Cure Period") if the Contractor~~

- ~~.1~~ repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

...

- ~~.3~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- ~~.4~~ otherwise is guilty of substantial breach of a provision of the Contract Documents.
- ~~.5~~ Contractor is adjudged bankrupt or insolvent, subject to the provision of the Bankruptcy Laws and specifically 11 U.S.C., Paragraph 365;
- ~~.6~~ Contractor makes a general assignment for the benefit of creditors;
- ~~.7~~ a trustee or receiver is appointed for Contractor or for any of Contractor's property;
- ~~.8~~ Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- ~~.9~~ Contractor disregards the authority of the Owner, Construction Manager or Architect; or

- .10 is debarred from performing public work in New Jersey or any other jurisdiction or is otherwise guilty of a breach of a provision of the New Jersey's Local Public Contracts Law and all other laws or regulations applicable to construction of public projects;
- .11 abandons the Work;
- .12 fails or refuses to perform a material obligation under the Agreement;
- .13 fails without cause to make prompt payment duly owing to a Subcontractor, provided that Owner is current on all of its payment obligations owing to Contractor;
- .14 Contractor fails to remove any lien or claim of lien filed against the Project by any of its Subcontractors, material suppliers, or any Sub-subcontractor provided that Owner has paid the Contractor for the amount sought in such lien by the Subcontractor or material supplier and that Owner is current on all of its payment obligations owing to Contractor; or
- .15 Contractor fails to achieve Final Completion within thirty (30) days of the Final Completion Date.

Contractor shall have the right to cure to the defaults within the Cure Period. If Contractor cures the default within the Cure Period, then Owner may not terminate the Agreement.

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- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. At any time, the Owner may free itself from all obligations hereunder and terminate such contract by satisfying the following conditions:

.1. Give written notice of cancellation to Contractor;

.2 Reimburse Contractor for all labor and engineering costs that it has incurred in connection with the Work prior to its receipt of written notice of cancellation by Owner;

.3 Reimburse Contractor for the cost of all material and equipment that was purchased specifically for the Work; provided, if certain of said material and equipment is of such nature that Contractor can readily and promptly use it in fabrication of other material and equipment and/or other Work not covered by the Contract, then Contractor shall not be reimbursed by Owner for the cost of said reusable equipment;

.4 Reimburse Contractor for all reasonable cancellation charges paid by it on account of commitments made specifically for materials and equipment in connection with the Work; and

.5 Pay to Contractor a percentage on all costs reimbursable to Contractor under Subsections .2, .3, and .4 above to cover overhead and profit (but not, as set forth in 14.4.3, for overhead and profit on uncompleted Work not otherwise covered by .2, .3, and .4 herein); however, in no event shall the total amount of a payment or payments made in accordance with Paragraphs 2, 3, 4, and 5 of this Section 14.4 exceed the Contract Sum.

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§ 15.1.2 Notice of Claims. Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within ~~21~~seven (7) days after occurrence of the event giving rise to such Claim or within ~~21~~seven (7) days after the claimant first recognizes the condition giving rise to the Claim, whichever is ~~later~~later, except that in order for the Contractor to request time for a delay, the Contractor must file a claim as provided in Article 8. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

...

§ 15.1.4 Claims for Additional Cost. § 15.1.4.1 If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to ~~execute the Work.~~ ~~Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3- executing Work for which the Claim relates.~~ If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued on behalf of Owner, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) any other reasonable grounds, Claim shall be filed in accordance with the procedure established herein. Failure to file a Claim in accordance with this Section shall constitute a waiver thereof.

§ 15.1.4.2 Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.4.3 The required notice shall include, to the extent then known by the Contractor, full details and substantiating data to permit evaluation by the Owner, Construction Manager and the Architect. If further, or other, information subsequently becomes known to the Contractor, it shall promptly be furnished to the Owner and the Architect in writing.

§ 15.1.4.4 In determining the validity of costs for additional work, the Construction Manager and the Architect will be guided by such standard referenced as "Means cost data", current construction costs, or any other standard construction industry references, all as issued for the year during which work was performed." The maximum allowance for overhead and profit on change order work shall be as scheduled under Section 7.3.10.

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§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional ~~time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had time shall be governed by Section 8.3.4 and is demonstrated to have an adverse effect on the scheduled construction.~~

§ 15.1.5.3 The required notice shall include, to the extent then known by the Contractor, full details and substantiating data to permit evaluation by the Owner, Construction Manager and the Architect. If further, or other, information subsequently becomes known to the Contractor, it shall promptly be furnished to the Owner, Construction Manager and the Architect in writing.

§ 15.1.6 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other

CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives Claims against Owner for consequential damages arising out of or relating to this Contract.

This ~~mutual waiver includes~~waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 ~~damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

This ~~mutual~~ waiver is applicable, without limitation, to all consequential damages due to ~~either party's~~ Contractor's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.7 Injury or Damage to Person or Property. If either party to the Contract for Construction suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the Architect and the other party within a reasonable time not exceeding 7 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 15.1.4 or 15.1.5.

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§ 15.3 Mediation**MANDATORY MEDIATION FOR DISPUTE RESOLUTION**

~~§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

§ 15.4 Arbitration

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

§15.3.1 Pursuant to N.J.S.A. 40A-11-50, all claims, disputes and other matters in question between the Contractor and the Owner arising out of, or relating to, the Contract Documents or the breach thereof, except with respect to the Construction Manager's or Architect's decisions on matters relating to artistic effect, and except for claims which have been waived by the making or acceptance of final payment as provided by Sections 9.10.1 through 9.10.4, inclusive, shall to the extent required by the Prompt Payment Act, be submitted to non-binding mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect.

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§15.3.1.1 Notwithstanding industry rules or any provision of law to the contrary, whenever a dispute concerns more than one contract, such as when a dispute in a contract involving construction relates to a contract involving design, architecture, engineering or management, upon the demand of a contracting party, other interested parties to the dispute shall be joined unless the arbitrator, mediator or other person appointed to resolve the dispute determines that such joinder is inappropriate. Notwithstanding industry rules or any provision of law to the contrary, whenever more than one dispute of a similar nature arises under a construction contract, or related construction contracts, upon the demand of a contracting party, the disputes shall be joined unless the arbitrator, mediator or other person appointed to resolve the dispute determines that the disputes are inappropriate for joinder.

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§15.3.1.2 In the event a claim or dispute or other matter in question between the Contractor and the Owner cannot be resolved by non-binding mediation, the matter shall be decided in a court of competent jurisdiction.

§ 15.4.4 Consolidation or Joinder

§15.3.1.3 No litigation arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, the Architect, its employees or consultants except by written consent of containing a specific reference to the Owner-Contractor Agreement and signed by the Architect, Construction Manager, the Owner, the Contractor and any other person sought to be joined. No litigation shall include by consolidation, joinder or in any other manner, parties other than the Owner, the Contractor and any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded in the litigation. No person other than the Owner or Contractor shall be included as an original third party or additional third party to a litigation whose interest or responsibility is insubstantial. Any consent to litigation involving an additional person or persons shall not constitute consent to litigation of any dispute not described therein or with any person not named or described therein. The foregoing agreement to litigate and any other agreement to litigate with an additional person or persons duly consented to by the parties to the Owner-Contractor Agreement shall be specifically enforceable under prevailing law.

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§15.3.2 Notice of litigation shall be filed in writing with the other party to the Agreement and with the court having competent jurisdiction, and a copy shall be filed with the Architect, Construction Manager and the Owner. The litigation shall be made within the time limits specified in this Agreement, where applicable, and in all other cases within a reasonable time after the claim, dispute and other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§15.3.3 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

§16 MECHANICS' LIENS

§16.1 Contractor shall promptly pay for all materials furnished, labor supplied or performed by others, rental for equipment employed, and services rendered by public utilities in or in connection with the prosecution of the work, whether or not the said material, labor, equipment and services entered into and become component parts of the work or improvement contemplated. This provision is intended to assure payment of every person, co-partnership, association or corporation who, as subcontractor or otherwise has furnished material, supplied or performed labor, rented equipment or supplied services in connection with the prosecution of the work as aforesaid, and shall preclude the filing by any such person, co-partnership, association or corporation of any mechanic's lien claim against Owner for such material, labor or rental of equipment.

§16.2 The Contractor, for any and all subcontractors and parties acting through or under them or any of them, covenants and agrees by and with the Owner that no mechanic's liens or claims shall be filed or maintained by the said Contractor or any subcontractors or other party acting through or under it, them or any of them against the aforesaid building and/or the lot of ground or cartilage appurtenant thereto, or against the interests of the Owner on account of any work done or materials furnished by them or any of them, whether prior to the execution of this Contract, under the aforesaid contract or under any supplemental contract thereto for extra or additional work or otherwise for, toward, in or about the work on the lot of ground herein described above, or any work or material therefore, and the said

Contractor for itself and its subcontractors and all persons acting for or under it, them or any of them hereby expressly waives and relinquishes the right to have, file or maintain any mechanic's claim or lien against the said building and/or the lot of ground herein described above or cartilage appurtenant thereto; to the interest of the Owner, it being the intent of the parties hereto that Contractor shall only possess those rights and remedies against Owner which are created by the terms and provision of this Agreement and are based upon the contractual relationship between Owner and Contractor as defined and limited by this Agreement and any changes or modifications thereto.

§16.3 Contractor further agrees that if, notwithstanding Owner's payment of all amounts not in dispute, the foregoing, any suit, lien or claim occasioned by the Contractor's performance of this Contract, whether directly or indirectly, or is filed by the Contractor, its Subcontractor, sub-subcontractors, materialmen or suppliers in any court having jurisdiction of the premises and the same matures into a lien against the property, Contractor shall immediately cause such lien to be discharged as to such property by posting bond or by such other means as may be provided under the applicable statutes and rules of court or shall otherwise indemnify, defend and save Owner harmless on account of any such claims, liens or suits.

ARTICLE 17 INTERPRETATIONS IN WRITING

§ 17.1 Neither the price bid for the Work of any Contract nor the Contract Sum, shall be based in any manner upon oral opinions or real or alleged instructions of an oral nature, regardless of whether such opinions or instructions are expressed by the Owner, the Architect, the Construction Manager, the Contractor, or agents or representatives of any of them.

§ 17.2 These provisions do not intend to deny normal discussion, recommendations, explanations, suggestions, approvals, rejections, and similar activity in pursuit of the Work of the Project on an oral basis, such as at job conferences and otherwise at the site. In such instances the written reports, correspondences, shop drawing records, written Field Directives and other written data shall govern over personal claims regarding statements made contrary to the written data.

§ 17.3 Interpretations of Contract Documents, to be effective for claim purposes or for justification as to proper procedure in performing the Work, must be obtained in writing before such claim is made or such work begun.

216224764v1 ~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~