

SECTION B – SAMPLE CONTRACT AWARD DOCUMENTS

THIS CONTRACT (the “Contract”) made this _____ day of _____ by and between _____, hereinafter referred to as the “Contractor”, and the City of Fayetteville, a North Carolina municipal corporation, hereinafter referred to as the “City”.

WITNESSETH:

WHEREAS, the City desires to procure a contractor to perform services; and

WHEREAS, the City has completed necessary steps for retention of construction and repair services under State law and applicable City policies; and

WHEREAS, the City has agreed to engage the Contractor, and the Contractor has agreed to contract with the City, for performance of services as described, and according to the further terms and conditions, set forth herein; and

WHEREAS, a Contract for _____ project has recently been awarded to the Contractor by the City in the amount of \$ _____, a sum equal to the aggregate cost of the work to be done and for labor, materials, equipment, apparatus, and supplies furnished at the prices and rates respectively named therefore in the Proposal attached herewith.

NOW THEREFORE, in consideration of sums to be paid to the Contractor, and other good and valuable consideration, the Contractor and City do contract and agree as follows:

1.0. Performance of Work

- 1.1. Contractor hereby covenants and agrees with City that it will well and faithfully perform and execute such work and furnish such labor, materials, equipment, apparatus and supplies, in accordance with the conditions, covenants, stipulations, terms, and provisions contained in said Specifications and Provisions and in accordance with the Plans, at and for a sum equal to the aggregate cost of the work done and labor, materials, equipment, apparatus and supplies furnished at the prices and rates respectively named therefore in the proposal attached thereto, and will well and faithfully comply with and perform each and every obligation imposed upon it by said Plans and Specifications and the terms of said Award.
- 1.2. Contractor shall promptly make payments to all persons supplying materials in the prosecution of the work and to all laborers and others employed thereon.
- 1.3. Contractor shall be responsible for all damages to City property that may be consequent upon the normal procedure of its work or that may be caused by or result from the negligence of Contractor, its employees or agents, during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. Contractor must restore all property so injured to a condition as good as it was when Contractor entered upon the work.
- 1.4. Contractor shall furthermore be responsible for and required to make good at its expense any and all damages of whatever nature to persons or property arising during the period of the Contract, caused by carelessness, neglect, or want of due precaution on the part of Contractor, its agents, employees or workmen. Contractor shall also indemnify and save harmless the City of Fayetteville, North Carolina, and the officers and agents thereof from all claims, suits, and proceedings of every name and description which may be brought against the City of Fayetteville, North Carolina, or the officers and agents thereof, for or on account of any injuries or damages to persons or property received or sustained by any person or persons, firm or corporation, or by or in consequence of any materials used in said work or by or on account of any improper material or workmanship in its construction, or by or on

account of any accident, or of any other act or omission of Contractor, its agents, employees, servants or workmen.

- 1.5. The Contractor shall be responsible for the proper custody and care of any property furnished or purchased by the City for use in connection with the performance of this Contract and will reimburse the City for the replacement value of its loss or damage. The Contractor shall keep the job sites and surrounding area reasonably free from rubbish at all times and shall remove debris from the site from time to time or when directed to do so by the City. Before final inspection and acceptance of the project, the Contractor shall thoroughly clean the job sites, and completely prepare the project and site for use by the City.
- 1.6. Limit work to between 7:00 a.m. to 6:00 p.m., Monday through Friday, unless otherwise indicated. Work hours may be modified to meet Project requirements if approved by Owner and authorities having jurisdiction.

2.0. Workmanship and Quality of Services/Warranties

- 2.1. All work under this Contract shall be done and performed to the satisfaction of the project architect/engineer, or of such other official, employee, or agent of the City as may be designated by the City, and such official, employee or agent designated by the City shall in all cases of dispute determine the quantity, quality, acceptability and fitness of the work and materials and of several portions thereof which are to be paid for under this Contract and shall decide and determine all questions which may arise as to the measurements, lines, levels and dimensions of the work and all questions respecting the true construction, interpretation or meaning of the plans and specifications. In case of dispute between the Contractor and the said official, employee, or agent of the City, the decision and determination of the City shall be taken and shall be final and conclusive.
- 2.2. The Contractor, in executing this Contract, warrants that it will be responsible for the maintenance or correction of any work completed under this Contract that may become defective due to faulty workmanship or materials for a period of one (1) year after final acceptance of the work performed.
- 2.3. It is understood and agreed by the parties hereto that work done under this Contract shall be subject to all ordinances of the City of Fayetteville relating to work done in the public streets or other public property of the City.

3.0. Time of Commencement and Completion

The entire work required by this Contract shall be completed by the Contractor not later than _____ days after the date of Notice-to-Proceed. Substantial Completion occurs at such time as a Certificate of Occupancy is issued for the building/project. Final Completion occurs when all construction has been performed including Punch List items shall.

4.0. Insurance

Contractor agrees to purchase at its own expense insurance coverages to satisfy the following minimum requirements. A certificate reflecting the following minimum coverages shall accompany this Contract:

- 4.1. Workers' Compensation Insurance:
Limits:
Workers Compensation: Statutory for the State of North Carolina
Employers Liability: Bodily Injury by Accident \$1,000,000 each accident
Bodily Injury by Disease: \$1,000,000 policy limit
Bodily Injury by Disease: \$1,000,000 each employee
- 4.2. Commercial General Liability:

Limits:

Each Occurrence:	\$1,000,000
Personal and Advertising Injury	\$1,000,000
General Aggregate Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

- 4.3. The aggregate limit must apply per project. The form of coverage must be the ISO CG 00 01 policy as approved by the State of North Carolina Department of Insurance. If a form of coverage other than the CG 00 01 is used it must be approved by the City's risk manager. Any endorsed exclusions or limitations from the standard policy must be clearly stated in writing and attached to the Certificate of Insurance. Completed Operations coverage must be maintained for the period of the applicable statute of limitations.
- 4.4. Commercial Automobile Liability:
Limits:
\$1,000,000 combined single limit.
- 4.5. Additional Insured:
Contractor agrees to endorse the City as an Additional insured on the Commercial General Liability, Auto Liability and Umbrella Liability if being used to meet the minimum liability limits for General Liability and Automobile Liability.
- 4.6. Builders Risk Coverage:
Limits:
Minimum limit in the amount of total bid price. The Builder Risk policy must be endorsed to increase the limit of insurance for all change orders.
- 4.7. Policy Form:
Builder Risk coverage must be on a direct physical loss basis and contain no exclusion for theft, collapse or damage to foundations or underground structures, pipes or conduits.
- 4.8. Named Insured:
The Named Insured shall be The City of Fayetteville, the Contractor, and all sub-contractors with a contractual assumption of responsibility for damage to the project.
- 4.9. All insurance companies must be admitted to do business in North Carolina and be acceptable to the City's risk manager. If the insurance company(s) is a permitted surplus lines insurer, the insurance company name, and NAIC number must be submitted to the City's risk manager for approval before commencing work. Contractor shall be required to provide the City no less than thirty (30) days' notice of cancellation, or any material change, to any insurance coverage required by this Contract.
- 4.10. A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the insurance company name and NAIC number clearly identified. The acceptance of or the review of Certificates of Insurance by the City does not relieve Contractor of any requirements in the Contract to provide specific insurance coverage required by the Contract, nor does the acceptance of or review of Certificates of Insurance covenant all insurance requirements have been met.

5.0. Sufficiency of Surety Bonds

If Surety Bonds are required by the City for this project, the Contractor shall have furnished and attached hereto a performance bond and a payment bond each in the penal sum of the full Contract amount covering the faithful performance of the Contract and the payment of all obligations arising hereunder, in such form and content as the

City may prescribe and with surety approved by the City. Should any surety upon the bond for the performance of this Contract become unacceptable to the City, the Contractor must promptly furnish additional security as may be required from time to time by the City to protect the interests of the City and of persons, firms and corporations supplying labor or materials in the performance of the work contemplated by the Contract.

6.0. Indemnity

- 6.1. To the fullest extent allowed by law, Contractor shall indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, or indemnities (collectively called "Indemnified Parties") from and against those Losses, liabilities, damages, and costs proximately caused by, arising out of, or resulting from the sole negligence of the Contractor, the Contractor's agents, or the Contractor's employees.
- 6.2. In matters other than those covered by subsection 6.1 above, and to the fullest extent allowed by law, Contractor shall indemnify, defend, and hold harmless the Indemnified Parties from and against those Losses, liabilities, damages, and costs caused by, arising out of, resulting from, or in connection with the execution of the work provided for in this Agreement when the Fault of the Contractor or its Derivative Parties is a proximate cause of the Loss, liability, damage, or expense indemnified.
- 6.3. Costs and expenses shall include attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the Indemnified Parties to defend against third-party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of any of the Indemnified Parties by law or by contract, only if the Fault of the Contractor or its Derivative Parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified.
- 6.4. The Contractor's duty to indemnify, defend, and hold harmless described hereinabove shall survive the termination or expiration of this Contract.
- 6.5. Definitions:
 - 6.5.1. For the purposes of this Section 6, the term "Fault" shall mean any breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violation of applicable statutes or regulations.
 - 6.5.2. For the purposes of this Section 6, the term "Loss" or "Losses" shall include, but not be limited to, fines, penalties, and/or judgments issued or levied by any local, state, or federal governmental entity.
 - 6.5.3. For the purposes of this Section 6, the term "Derivative Parties" shall mean any of the Contractor's subcontractors, agents, employees, or other persons or entities for which the Contractor may be liable or responsible as a result of any statutory, tort, or contractual duty.

7.0. Compensation

- 7.1. Contractor shall promptly make payments to all persons supplying materials in the prosecution of the work and to all laborers and others employed thereon.
- 7.2. Contractor shall furnish with each pay application on City provided forms, beginning not later than the second application for payment, an affidavit certifying the total cost of materials and North Carolina Sales Tax paid on such materials which are included in the application for payment.
- 7.3. City hereby agrees that it will pay to Contractor, when due payable under the terms of said Conditions and Award, the above-mentioned sum, and that it will well and faithfully comply with and perform each and every obligation imposed upon it by said Conditions and Award.

- 7.4. In consideration of the performance of this Contract and the full completion of the work required of the Contractor by the terms and conditions of this Contract, the City agrees to pay to the Contractor the contract amount based on the following:
- 7.5. Payments will be made to the Contractor by the City NET thirty (30) days after presentation of a true and accurate payment application to the City as certified by the Project Architect/Engineer or agent of the City.
- 7.6. Final estimate of the amount due to the Contractor will be made within thirty (30) days after the certified completion and final acceptance of all the work required by the Contract less retainage. Payment to the Contractor by the City of the amounts so determined to be due, in accordance with this Contract, shall relieve the City from all claims for work done and materials and equipment furnished under this Contract.
- 7.7. It is further mutually agreed between the parties that no estimate, partial payment or payment made under this Contract shall be conclusive evidence of the performance of this Contract, either wholly or in part, and that no such payment shall be construed to be an acceptance of defective work or improper materials.

8.0. Right of Audit and Examination of Records

- 8.1. The City may conduct an audit of any services performed and fees paid subject to this Contract. The City, or its designee, may perform such an audit throughout the contract period and for three (3) years after termination thereof or longer if otherwise required by law.
- 8.2. The Contractor and its agents shall maintain all books, documents, papers, accounting records, contract records and such other evidence as may be appropriate to substantiate costs incurred under this Contract. The City, or its designee, shall have the right to, including but not limited to: review and copy records; interview current and former employees; conduct such other investigation to verify compliance with Contract terms; and conduct such other investigation to substantiate costs incurred by this Contract.
- 8.3. "Records" shall be defined as data of every kind and character, including but not limited to books, documents, papers, accounting records, contract documents, information, and materials that, in the City's sole discretion, relate to matters, rights, duties or obligations of this Contract.
- 8.4. Records and employees shall be available during normal business hours upon advanced written notice. Electronic mail shall constitute written notice for purposes of this section.
- 8.5. Contractor shall provide the City or its designee reasonable access to facilities and adequate and appropriate workspace for the conduct of audits.
- 8.6. The rights established under this section shall survive the termination of the Contract, and shall not be deleted, circumvented, limited, confined, or restricted by contract or any other section, clause, addendum, attachment, or the subsequent amendment of this Contract.
- 8.7. The Contractor shall reimburse the City for any overcharges identified by the audit within ninety (90) days of written notice of the City's findings.
- 8.8. If an audit discloses overpricing or overcharges by the Contractor or Subcontractor in excess of one percent (1%) of the total contract billings, the Contractor shall reimburse the City for the cost of the audit.
- 8.9. Contractor shall ensure that all contracts with any subcontractors provide the City with an equivalent right to audit as contained herein.
- 8.10. Contractor shall, upon request, provide any records associated with this engagement to the North Carolina State Auditor that are necessary to comply with the provisions of G.S. § 147-64.7.

9.0. Incorporation of Documents/Complete Agreement

This Contract, and any documents incorporated below, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements or Contracts. Specifically incorporated into this Contract are the following attachments, or if not physically attached, are incorporated fully herein by reference:

- _____ Invitation to Bid
- _____ Bid Proposal
- _____ Procedure for N.C. Sales Tax Reporting
- _____ Performance Bond (w/Power-of-Attorney)
- _____ Payment Bond (w/Power-of-Attorney)
- _____ Certificate of Insurance
- _____ General Conditions
- _____ Special or Supplemental Conditions
- _____ Job Specifications
- _____ SDBE Affidavits/documentation
- _____ Special Provisions
- _____ Other (Describe)

In case of conflict between this Contract and any of the incorporated attachments or references listed above, the terms of this Contract shall prevail.

10.0. Termination

- 10.1. Termination for Cause: In the event of substantial failure by Contractor to perform in accordance with the terms of this contract, City of Fayetteville shall have the right to terminate Contractor upon ten calendar (10) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed. Contractor shall provide to the City all reports, surveys or other related documents upon the City’s request following termination.
- 10.2. Termination for Convenience: Upon thirty (30) calendar days’ written notice to Contractor, the City of Fayetteville may, without cause and without prejudice to any other right or remedy legally available to the City of Fayetteville, terminate this Contract. Upon such notice, Contractor shall have neither the obligation nor the right to perform services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, Contractor shall be paid for the completed and accepted work executed in accordance with this Contract prior to the written notice of termination. Additionally, upon mutual agreement, Contractor may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Contract, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days’ after the written notice is sent by the City of Fayetteville. Contractor shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City’s request.

11.0. Laws/Safety Standards

- 11.1. Contractor must comply with North Carolina Occupational Safety and Health Standards for General Industry 13 NCAC 07F (29CFR 1910). In addition, Contractor shall comply with all applicable occupational health and safety and environmental rules and regulations.
- 11.2. Contractor shall effectively manage its safety and health responsibilities including:
- 11.3. Accident Prevention: Contractor managers and supervisors shall ensure personnel safety by strict adherence to established safety rules and procedures.

- 11.4. Environmental Protection: Protect the environment on, near, and around the work site by compliance with all applicable environmental regulations.
- 11.5. Employee Education and Training: Provide education and training to all Contractor's employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

12.0. Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the City by the Contractor are subject to the public records laws of the State of North Carolina and it is the responsibility of the Contractor to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the City. Contractor understands and agrees that the City may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this section, the provisions of this section shall control.

13.0. Other Provisions

- 13.1. Antidiscrimination: It is further agreed that the Contractor will not discriminate against any employee or applicant because of race, color, creed, sex, or religion.
- 13.2. Assignment: It is the intent of this Contract to secure the services of the Contractor and failure of the Contractor for any reason to make the services available to the City for the purposes described in this Contract, shall be cause for termination of this Contract. Contractor shall not assign this Contract without prior written consent of the City of Fayetteville.
- 13.3. Governing Law: The validity, interpretation, and execution of this contract and the performance of and rights accruing under this Contract are all to be governed by the laws of North Carolina.
- 13.4. Compliance with Law: Contractor agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and other units of local government.
- 13.5. Severability: The parties agree that if any provision of this Contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this Contract and the requirements of applicable law.
- 13.6. Default: In the event of substantial failure by Contractor to perform in accordance with the terms of this Contract, City of Fayetteville shall have the right to terminate Contractor upon ten (10) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed. The Contractor shall be entitled to compensation for all work properly executed and accepted by the City. No claim shall be made by the Contractor for any change order or termination, by reason of any variation between the approximate quantities and the quantity of work as done, or for lost profits.
- 13.7. Divestment of Companies Boycotting Israel or Investing in Iran Certification: Contractor certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as "FD Lists"); and (iii) it will not take any action causing it to appear on the Treasurer's FD Lists created by the NC State Treasurer during the term of this Contract. By signing this Contract, Contractor further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the

City in connection with any claim that this Contract or any part thereof is void due to Contractor appearing on the Treasurer's FD Lists at any time before or during the term of this Contract.

- 13.8. E-Verify: Contractor hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Contractor further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use e-verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Contractor hereby pledges, attests and warrants through execution of this Agreement that Contractor complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by Contractor shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Contract.
- 13.9. Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 13.10. Morality Clause: If, in the sole opinion of the City, at any time Contractor any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more of the actions below, the City may immediately upon written notice to Contractor, terminate this Contract, in addition to any other rights and remedies that the City may have hereunder or at law or in equity:
 1. bring disrepute, contempt, scandal, or public ridicule to the Actor;
 2. subject the Actor to prosecution;
 3. offend the community or public morals/decency;
 4. denigrate individuals or groups in the community served by the City;
 5. is scandalous or inconsistent with community standards or good citizenship;
 6. adversely affect the City's finances, public standing, image, or reputation;
 7. is embarrassing or offensive to the City or may reflect unfavorably on the City; and,
 8. is derogatory or offensive to one or more employee(s) or customer(s) of the City.
- 13.11. Non-Appropriation: Notwithstanding any other provisions of this contract, the parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the City to pay the terms of this agreement for any fiscal year, this contract shall terminate immediately without further obligation of City.
- 13.12. Protest: Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than seven (7) calendar days following receipt of said protest by the Purchasing Manager.
- 13.13. Survival of Terms: All warranties, covenants, and representations contained within this contract and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this contract. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this contract or other applicable work undertaken in furtherance of this contract.
- 13.14. Venue and Forum Selection: The Parties expressly agree that if litigation is brought in connection with this Contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties

agree that the appropriate venue shall be in Cumberland County (Fourteenth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

- 13.15 Communications: If communications to the public and/or City employees are required as part of the Contractor's scope of work under this Contract, then the Contractor shall work with the City in the development of a communications plan ("Communications Plan") that must first be approved by the City in writing before any such communications are delivered to the public and/or City employees. For purposes of this Section, "Communications" is defined as any public or City employee facing information presented in channels such as, but not limited to, a website, mobile applications, social media, printed materials, vehicles, billboards, and videos.
- 13.16 Advertising: The Contractor shall not use the existence of this Contract, or the name of the City, as part of any advertising without prior written approval of the City.
- 13.17 Independent Contractor: The Contractor shall be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the City.
- 13.18 Amendment: This Contract may be amended only by written agreement of the parties executed by their authorized representatives.

14.0. Notices

Except as otherwise expressly provided in this Contract, all notices, requests for payment, or other communications arising hereunder shall be sent to the following:

City of Fayetteville	Contractor
Attn: Kimberly Toon	Attn:
Title: Purchasing Manager	Title:
Address 1: 433 Hay Street	Address 1:
Address 2: Fayetteville, NC 28301	Address 2:
Telephone: (910) 433-1942	Telephone:
E-mail: kimberlytoon@fayettevillenc.gov	E-mail:

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Contract by signature, under seal, on the respective dates below, and this Contract shall be effective upon the date of the City's signature.

CONTRACTOR:

CITY:

CITY OF FAYETTEVILLE
a North Carolina municipal corporation

By:

By:

Signature (SEAL)

Signature

Name

Name

Title

Title

Date of Signature

Date of Signature

ATTEST:

ATTEST:

Signature

City Clerk (or designee) (SEAL)

Name

Title

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Jeffrey Yates, Assistant City Manager/ Interim Chief Financial Officer

AIA[®] Document A101[®] – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

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

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

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

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

Mazarick Park Tennis Center Tennis Sitework

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

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.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

(1296190575)

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**

EXHIBIT A INSURANCE AND BONDS

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 a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

In addition to the Work described in the Contract Documents, Contractor agrees to assist Owner in obtaining any necessary permits for the Project.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

§ 3.3 Substantial Completion

Init.

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
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§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

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 (\$), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
------	-------

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

Such unit prices are considered all-inclusive, complete and include (1) all materials, equipment, _____, delivery, installation, overhead and profit and (2) any other costs or expense in connection with or incidental to the performance of that portion of Work to which such unit prices apply.

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

\$1,000.00 per day

The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time. The Contractor further acknowledges and agrees that if

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the Contractor fails to complete substantially or cause the Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain.

Therefore, if the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the date that the Contractor achieves Substantial Completion of the entire Work. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work:

\$1,000.00 per calendar day

The Owner may deduct liquidated damages described above from any unpaid amounts then or thereafter due the Contractor under this Contract. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable by the Contractor to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to 8%.

Notwithstanding anything to the contrary in the Contract, if the Owner is unable to recover any portion of liquidated damages in accordance with the terms and conditions of Section 3.4 because any portion of Section 3.4 is found to be unenforceable or invalid as a penalty or otherwise, then, the Owner shall be entitled to recover from the Contractor all of the Owner's actual damages in connection with any failure by the Contractor to achieve Substantial Completion of the Work within the Contract Time, including, without limitation, consequential damages.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment, including all completed and accurate supporting documentation required by Owner or Architect submitted to and approved by the Architect and Owner, the Owner shall make progress payment on account of the Contract Sum to the Contractor within 30 days of receipt of a complete and accurate Application for Payment together with all supporting documentation as required by Owner, including, but not limited to partial and final lien waivers and releases of claims from Contractor and all first and second tier subcontractors and suppliers. With each Application for Payment, Contractor shall provide an updated CPM Construction Schedule in a manner and format acceptable to Owner. Additionally, the Contractor will note in narrative format all data changes from the last Schedule as well as any changes to logic ties. The Contractor will also describe the manpower needed to meet the date of Substantial Completion and whether any updated Schedule includes any "stacking" of trades.

§ 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 accepted and complete Application for Payment is received by the Architect and Owner not later than the 1st day of a month, together with all required supporting documentation as determined by Owner or Architect, the Owner shall make payment of the amount certified to the Contractor not later than the 30th day of the month. If an Application for Payment is received by the Owner or Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 30th () days after the Architect or Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 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. The schedule of values shall be prepared in such form, and supported by such data to

substantiate its accuracy, as the Owner and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 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. . In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of North Carolina.

- (i) A current Sworn Statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contractor has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the application for payment, and the amount to be paid to the Contractor from such progress payment, together with a current, duly executed waiver of mechanics' and material suppliers' liens from the Contractor establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment.
- (ii) Commencing with the second Application for Payment submitted by the Contractor, duly executed so-called "after-the-fact" or "trailing" waivers of mechanics' and material suppliers' liens from all Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current Application for Payment, plus sworn statements from all Subcontractors, material suppliers and, where appropriate, lower tier subcontractors, covering all of the amounts described in this clause (ii) of Section 5.1.5.
- (iii) Such other information, documentation, and materials as the Owner, the Architect, or the title insurer may require.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 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; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which payment has previously been withheld;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which payment may be withheld as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5% until Final Completion & acceptance of Project by Owner.

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

General conditions, insurance and bonds

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Any reduction in retainage shall be at the sole discretion of Owner.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 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.

§ 5.1.10 With each Application for Payment, the Contractor shall provide a partial release of lien for all completed Work in a form acceptable to the Owner. If at any time there shall be evidence of any mechanic’s lien having been filed by or through the Contractor for which, if established, the Owner might be liable, the Owner in addition to all rights it has under applicable law to remove such liens, shall have the right to retain out of any payment then due, or thereafter becoming due, an amount sufficient to indemnify the Owner for any such mechanic’s lien until it has been terminated and discharged or bonded. The Contractor shall within ten (10) days of notice of such lien, cause to be discharged and terminated any lien filed by any of its subcontractors, sub-subcontractors, materialmen, suppliers, or laborers, or shall bond against same by a bond satisfactory to the Owner.

§ 5.1.11 No such subcontractor, sub-subcontractor, materialmen, supplier or laborer is an intended third-party beneficiary of this Agreement. No subcontractor, sub-subcontractor, materialmen, supplier or laborer has the right to assert an equitable lien against the Owner. The Owner has the right, but not the obligation to make payments to subcontractors, sub-subcontractors, materialmen, suppliers, or laborers following a payment default by the Contractor. The sole remedy available to subcontractors, sub-subcontractors, materialmen, suppliers, or laborers against the Owner is through a properly perfected mechanic’s lien claim. All agreements between the Contractor and its subcontractors, sub-subcontractors, materialmen, suppliers, or laborers shall contain the precise language of this paragraph.

§ 5.2 Final Payment

§ 5.2.1

(Paragraphs deleted)

Certification. At the completion of the Work, the Contractor shall provide the Owner with a final waiver and release of liens in a form acceptable to the Owner attesting that the Contractor and all of its subcontractors, sub-subcontractors, materialmen, suppliers, or laborers have been paid in full and that no lien or claim has been filed by any of its subcontractors, sub-subcontractors, materialmen, suppliers, or laborers and that the Contractor has not received any notice of any person intending to file a lien or claim.

§ 5.2.2 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 Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 the Contractor provided the Certification required by Section 5.2.1 of this Agreement.
- .3 the Contractor has completed all punch list items to the owner's satisfaction; and
- .4 Contractor has provided all maintenance and operating manuals, market sets of field record drawings and specifications reflecting "as-built" conditions, reproducible mylar drawings reflecting the location of any concealed utilities, mechanical or electrical systems and components, any special guarantees or warranties required by the contract documents, assignments of all guarantees and warranties from subcontractors, vendors, suppliers, or manufacturers, and a list of the names, addresses and telephone numbers of all subcontractors and any other persons providing guarantees and warranties.

§ 5.2.3 The Owner's final payment to the Contractor shall be made no later than 30 days after the conditions of Section 5.2.2 of this Agreement are satisfied and the Owner approves the Contractor's final Application for Payment:

§ 5.3 Interest

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

4 %

ARTICLE 6 DISPUTE RESOLUTION

(Paragraphs deleted)

§ 6.1 WORK CONTINUANCE AND PAYMENT

Unless otherwise agreed in writing, the Contractor shall continue the Work during any dispute mitigation or resolution discussions or proceedings and the Owner shall continue to make payments in accordance with this Agreement. Under no circumstances shall the Contractor be entitled to stop work except as expressly specified in the Contract Documents.

§ 6.2 Binding Dispute Resolution

The binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Section 15.4 of AIA Document A201-2017 at the sole discretion of Owner

Litigation in a court of competent jurisdiction

Other *(Specify)*

(1) All claims and disputes arising out of or relating to this Agreement shall be resolved by litigation or, at Owner's sole discretion, by binding arbitration administered by the American Arbitration Association ("AAA") and conducted pursuant to the Construction Industry Rules of the AAA in effect at the time of this Agreement.

(2) The prevailing party shall be entitled to recover attorney's fees and costs, including, but not limited to, all fees of the AAA, compensation of the Arbitrator(s), and expert witness fees and costs.

(3) The sole and exclusive venue for any arbitration proceedings shall be Fayetteville, Cumberland County, North Carolina unless otherwise agreed by the Parties. Any and all litigation

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proceedings arising out of or related to this Agreement shall be in Cumberland County, North Carolina.

If the Owner and Contractor do not select a method of binding dispute resolution, 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.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor for all work properly performed prior to termination plus reasonable overhead and profit on the work performed plus reasonable demobilization costs. The Contractor will not be entitled to any termination fee or anticipated or lost profits. In the event of a termination for convenience, the Contractor’s subcontracts and purchase orders shall be automatically assigned to Owner and Contractor agrees to include such provisions in all subcontracts and purchase orders.: In the event of a termination for convenience by Owner, Contractor shall remain responsible and liable for all warranty work in relation to the Work completed prior to termination. Contractor shall be liable for indemnity obligations and latent construction defects until the applicable Statute of Repose has expired.

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:
(Name, address, email address, and other information)

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the work:

- i. that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- ii. that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- iii. that it is authorized to do business in the State of North Carolina and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- iv. that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- v. that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents; and
- vi. that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, as modified, including all exhibits and attachments
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for

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(Paragraphs deleted)

Construction, as modified

.4 Drawings

Number	Title	Date
Listed in Attachment "A"		

.5 Specifications

Section	Title	Date	Pages
Listed in Attachment "B"			

.6 Addenda, if any:

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

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

.7 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

N/A

The Sustainability Plan:

Title	Date	Pages
N/A		

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
All provisions of the Invitation to Bid			

.8 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Attachment "A" – Specifications dated

Attachment "B" – List of Design Drawings

Attachment "C" – Lien Waiver Forms

1. Partial & Final Waiver of Liens & Claims from First-Tier-Tier Subcontractor to Contractor;
2. Partial & Final Waiver of Liens & claims from Contractor to Owner; and

3. Partial & Final Waiver of Lien & Claims from Second-Tier Subcontractor/Supplier to
First-Tier Subcontractor/Supplier.
Attachment "D" – Construction Schedule

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

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)

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Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:21:01 ET on 07/04/2024

PAGE 1

Mazarick Park Tennis Center Tennis Sitework

PAGE 2

In addition to the Work described in the Contract Documents, Contractor agrees to assist Owner in obtaining any necessary permits for the Project.

...

The date of this Agreement.

PAGE 3

Not later than () calendar days from the date of commencement of the Work.

...

Such unit prices are considered all-inclusive, complete and include (1) all materials, equipment, delivery, installation, overhead and profit and (2) any other costs or expense in connection with or incidental to the performance of that portion of Work to which such unit prices apply.

...

\$1,000.00 per day

The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain.

Therefore, if the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the date that the Contractor achieves Substantial Completion of the entire Work. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work:

\$1,000.00 per calendar day

The Owner may deduct liquidated damages described above from any unpaid amounts then or thereafter due the Contractor under this Contract. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable by the Contractor to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to 8%.

Notwithstanding anything to the contrary in the Contract, if the Owner is unable to recover any portion of liquidated damages in accordance with the terms and conditions of Section 3.4 because any portion of Section 3.4 is found to be unenforceable or invalid as a penalty or otherwise, then, the Owner shall be entitled to recover from the Contractor all of the Owner's actual damages in connection with any failure by the Contractor to achieve Substantial Completion of the Work within the Contract Time, including, without limitation, consequential damages.

PAGE 4

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments Payment, including all completed and accurate supporting documentation required by Owner or Architect submitted to and approved by the Architect and Owner, the Owner shall make progress payment on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Contractor within 30 days of receipt of a complete and accurate Application for Payment together with all supporting documentation as required by Owner, including, but not limited to partial and final lien waivers and releases of claims from Contractor and all first and second tier subcontractors and suppliers. With each Application for Payment, Contractor shall provide an updated CPM Construction Schedule in a manner and format acceptable to Owner. Additionally, the Contractor will note in narrative format all data changes from the last Schedule as well as any changes to logic ties. The Contractor will also describe the manpower needed to meet the date of Substantial Completion and whether any updated Schedule includes any "stacking" of trades.

...

§ 5.1.3 Provided that an accepted and complete Application for Payment is received by the Architect and Owner not later than the 1st day of a month, together with all required supporting documentation as determined by Owner or Architect, the Owner shall make payment of the amount certified to the Contractor not later than the 30th day of the month. If an Application for Payment is received by the Owner or Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 30th () days after the Architect or Owner receives the Application for Payment.

...

§ 5.1.4 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. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 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. In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of North Carolina.

- (i) A current Sworn Statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contractor has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the application for payment, and the amount to be paid to the Contractor from such progress payment, together with a current, duly executed waiver of mechanics' and material suppliers' liens from the Contractor establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment.
- (ii) Commencing with the second Application for Payment submitted by the Contractor, duly executed so-called "after-the-fact" or "trailing" waivers of mechanics' and material suppliers' liens from all Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current Application for Payment, plus sworn statements from all Subcontractors, material suppliers and, where appropriate, lower tier subcontractors, covering all of the amounts described in this clause (ii) of Section 5.1.5.

- (iii) Such other information, documentation, and materials as the Owner, the Architect, or the title insurer may require.

PAGE 5

- .2 The amount, if any, for Work that remains uncorrected and for which ~~the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017; payment has previously been withheld;~~

...

- .4 For Work performed or defects discovered since the last payment application, any amount for which ~~the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, payment may be withheld~~ as provided in Article 9 of AIA Document A201-2017; and

...

10% until Final Completion & acceptance of Project by Owner.

PAGE 6

General conditions, insurance and bonds

...

Any reduction in retainage shall be at the sole discretion of Owner.

...

§ 5.1.10 With each Application for Payment, the Contractor shall provide a partial release of lien for all completed Work in a form acceptable to the Owner. If at any time there shall be evidence of any mechanic's lien having been filed by or through the Contractor for which, if established, the Owner might be liable, the Owner in addition to all rights it has under applicable law to remove such liens, shall have the right to retain out of any payment then due, or thereafter becoming due, an amount sufficient to indemnify the Owner for any such mechanic's lien until it has been terminated and discharged or bonded. The Contractor shall within ten (10) days of notice of such lien, cause to be discharged and terminated any lien filed by any of its subcontractors, sub-subcontractors, materialmen, suppliers, or laborers, or shall bond against same by a bond satisfactory to the Owner.

§ 5.1.11 No such subcontractor, sub-subcontractor, materialmen, supplier or laborer is an intended third-party beneficiary of this Agreement. No subcontractor, sub-subcontractor, materialmen, supplier or laborer has the right to assert an equitable lien against the Owner. The Owner has the right, but not the obligation to make payments to subcontractors, sub-subcontractors, materialmen, suppliers, or laborers following a payment default by the Contractor. The sole remedy available to subcontractors, sub-subcontractors, materialmen, suppliers, or laborers against the Owner is through a properly perfected mechanic's lien claim. All agreements between the Contractor and its subcontractors, sub-subcontractors, materialmen, suppliers, or laborers shall contain the precise language of this paragraph.

§ 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 Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect Certification. At the completion of the Work, the Contractor shall provide the Owner with a final waiver and release of liens in a form acceptable to the Owner attesting that the Contractor and all of its subcontractors, sub-subcontractors, materialmen, suppliers, or laborers have been paid in full and that no lien or claim has been filed by any of its subcontractors, sub-subcontractors, materialmen, suppliers, or laborers and that the Contractor has not received any notice of any person intending to file a lien or claim.

~~§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows: 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 Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and~~
- ~~2 the Contractor provided the Certification required by Section 5.2.1 of this Agreement.~~
- ~~3 the Contractor has completed all punch list items to the owner's satisfaction; and~~
- ~~4 Contractor has provided all maintenance and operating manuals, market sets of field record drawings and specifications reflecting "as-built" conditions, reproducible mylar drawings reflecting the location of any concealed utilities, mechanical or electrical systems and components, any special guarantees or warranties required by the contract documents, assignments of all guarantees and warranties from subcontractors, vendors, suppliers, or manufacturers, and a list of the names, addresses and telephone numbers of all subcontractors and any other persons providing guarantees and warranties.~~

~~§ 5.2.3 The Owner's final payment to the Contractor shall be made no later than 30 days after the conditions of Section 5.2.2 of this Agreement are satisfied and the Owner approves the Contractor's final Application for Payment:~~

~~PAGE 7~~

~~4 %~~

~~...~~

~~§ 6.1 Initial Decision Maker~~

~~The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the 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.)~~

§ 6.1 WORK CONTINUANCE AND PAYMENT

Unless otherwise agreed in writing, the Contractor shall continue the Work during any dispute mitigation or resolution discussions or proceedings and the Owner shall continue to make payments in accordance with this Agreement. Under no circumstances shall the Contractor be entitled to stop work except as expressly specified in the Contract Documents.

~~For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of The binding dispute resolution shall be as follows:~~

~~...~~

~~Arbitration pursuant to Section 15.4 of AIA Document A201-2017 at the sole discretion of Owner~~

~~...~~

~~Other (Specify)~~

~~(1) All claims and disputes arising out of or relating to this Agreement shall be resolved by litigation or, at Owner's sole discretion, by binding arbitration administered by the American~~

Arbitration Association ("AAA") and conducted pursuant to the Construction Industry Rules of the AAA in effect at the time of this Agreement.

- (2) The prevailing party shall be entitled to recover attorney's fees and costs, including, but not limited to, all fees of the AAA, compensation of the Arbitrator(s), and expert witness fees and costs.
- (3) The sole and exclusive venue for any arbitration proceedings shall be Fayetteville, Cumberland County, North Carolina unless otherwise agreed by the Parties. Any and all litigation proceedings arising out of or related to this Agreement shall be in Cumberland County, North Carolina.

PAGE 8

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor ~~a termination fee as follows:~~ for all work properly performed prior to termination plus reasonable overhead and profit on the work performed plus reasonable demobilization costs. The Contractor will not be entitled to any termination fee or anticipated or lost profits. In the event of a termination for convenience, the Contractor's subcontracts and purchase orders shall be automatically assigned to Owner and Contractor agrees to include such provisions in all subcontracts and purchase orders. In the event of a termination for convenience by Owner, Contractor shall remain responsible and liable for all warranty work in relation to the Work completed prior to termination. Contractor shall be liable for indemnity obligations and latent construction defects until the applicable Statute of Repose has expired.

PAGE 9

The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the work:

- i. that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- ii. that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- iii. that it is authorized to do business in the State of North Carolina and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- iv. that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- v. that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents; and
- vi. that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

...

~~.1~~ AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor Contractor, as modified, including all exhibits and attachments

...

~~.3~~ AIA Document A201™-2017, General Conditions of the Contract for ~~Construction~~

~~.4~~ ~~Building information modeling exhibit, dated as indicated below:~~

~~(Insert the date of the building information modeling exhibit incorporated into this Agreement.)~~ Construction, as modified

PAGE 10

~~.5~~ ~~.4~~ Drawings

...

Listed in Attachment "A"

~~.6~~ ~~.5~~ Specifications

...

Listed in Attachment "B"

~~.7~~ ~~.6~~ Addenda, if any:

...

~~.8~~ ~~.7~~ Other Exhibits:

...

N/A

...

N/A

...

All provisions of the Invitation to Bid

~~.9~~ ~~.8~~ Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Attachment "A" – Specifications dated

Attachment "B" – List of Design Drawings

Attachment "C" – Lien Waiver Forms

1. Partial & Final Waiver of Liens & Claims from First-Tier-Tier Subcontractor to Contractor:

2. Partial & Final Waiver of Liens & claims from Contractor to Owner: and

3. Partial & Final Waiver of Lien & Claims from Second-Tier Subcontractor/Supplier to

First-Tier Subcontractor/Supplier
Attachment "D" – Construction Schedule

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:21:01 ET on 07/04/2024 under Order No. 2114474241 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA Document A101® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the day of in the year
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

Mazarick Park Tennis Center Tennis Sitework

THE OWNER:
(Name, legal status and address)

THE CONTRACTOR:
(Name, legal status and address)

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

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 Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees. Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor shall include a waiver of subrogation.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
----------------	-----------

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
----------	-----------

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions. Notwithstanding, if the cause of any loss payment under such insurance is the fault of the Contractor, then the Contractor shall pay such deductible.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure

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against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

- § A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

- § A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

- § A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

- § A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

- § A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

- § A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

§ A.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

§ A.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. Additional insured coverage as required in this paragraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by, the Owner. Contractor shall also require its subcontractors to provide additional insured coverage for the Owner, the Architect, and the Architect's consultants with insurance reasonably satisfactory to the Owner. If the additional insureds have other insurance that is applicable to the loss (including but not limited to builders risk insurance), such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under the Contractor's or subcontractors' insurance policies shall not be reduced by the existence of such other insurance.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

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§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$) each occurrence, (\$) general aggregate, and (\$) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

Such coverage shall be maintained for no less than six (6) years following final payment.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than (\$) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

[] § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

- [] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- [] **§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.**
- [] **§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.**
- [] **§ A.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

If a bond is required, it shall comply with the following specific requirements:

1. Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.
2. Bonds shall be executed by a responsible surety licensed in North Carolina, with a Best's rating of no less than A/XII, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
3. The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.
4. The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.
5. Every Bond must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
 - a. The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
 - b. The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of Owner.

If a bond is required as set forth above, the Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment; and (iv) any other item required by the Surety. The Owner shall be notified by the Contractor, in writing, of all communications with the Surety. The Owner may, in the

Init.

Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Additions and Deletions Report for AIA® Document A101® – 2017 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:22:47 ET on 07/04/2024.

PAGE 1

Mazarick Park Tennis Center Tennis Sitework

PAGE 2

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees. Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor shall include a waiver of subrogation.

...

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions. Notwithstanding, if the cause of any loss payment under such insurance is the fault of the Contractor, then the Contractor shall pay such deductible.

PAGE 4

§ A.3.1.3 **Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. Additional insured coverage as required in this paragraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by, the Owner. Contractor shall also require its subcontractors to provide additional insured coverage for the Owner, the Architect, and the Architect's consultants with insurance reasonably satisfactory to the Owner. If the additional insureds have other insurance that is applicable to the loss (including but not limited to builders risk insurance), such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under the Contractor's or subcontractors' insurance policies shall not be reduced by the existence of such other insurance.

PAGE 5

Such coverage shall be maintained for no less than six (6) years following final payment.

PAGE 7

If a bond is required, it shall comply with the following specific requirements:

1. Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.
2. Bonds shall be executed by a responsible surety licensed in North Carolina, with a Best's rating of no less than A/XII, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
3. The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.
4. The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.
5. Every Bond must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
 - a. The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
 - b. The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of Owner.

If a bond is required as set forth above, the Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment; and (iv) any other item required by the Surety. The Owner shall be notified by the Contractor, in writing, of all communications with the Surety. The Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

AIA[®] Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Mazarick Park Tennis Center Tennis Sitework

THE OWNER:

(Name, legal status and address)

THE CONTRACTOR:

(Name, legal status and address)

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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

TABLE OF ARTICLES

- | | |
|----|---|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |
| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |
| 13 | MISCELLANEOUS PROVISIONS |
| 14 | TERMINATION OR SUSPENSION OF THE CONTRACT |
| 15 | CLAIMS AND DISPUTES |

Init.

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User Notes:

(1667526251)

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates of Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of

1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration

15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR

SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of

1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,

12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,

8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal

Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Init.

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User Notes:

(1667526251)

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, 3.17
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification
9.4.1, 9.5, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2

Emergencies
10.4, 14.1.1.2, 15.1.5
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**

Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2
Initial Decision Maker, Definition of
1.1.8

Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4

Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of
1.1.7

Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS

11
Insurance Companies, Consent to Partial Occupancy
9.9.1

Insured loss, Adjustment and Settlement of
11.5

Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest
13.5

Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written
4.2.11, 4.2.12

Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes
8.3.1

Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4

Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1

Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, **10.3**

Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,
15.4.1.1

Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

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

1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, 9.9

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Payments, Progress

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

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User Notes:

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Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, **11.2**
Proposal Requirements
1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field
Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and
Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples
by Contractor
3.12
Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
12.2.4, **13.3, 14, 15.4**
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, **10.1, 10.2, 10.4**
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, **3.12, 4.2.7**
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, **3.12, 4.2.7**
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
1.1.1, **1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14**
Statute of Limitations
15.1.2, 15.4.1.1
Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
9.9.1, 9.10.2, 9.10.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, **11.3**
Substances, Hazardous
10.3
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8, 9.9.1, 9.10.3, 12.2,**
15.1.2
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
2.3.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2

Subsurface Conditions
3.7.4

Successors and Assigns
13.2

Superintendent
3.9, 10.2.6

Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of
9.8.5, 9.10.2, 9.10.3

Surveys
1.1.7, 2.3.4

Suspension by the Owner for Convenience
14.3

Suspension of the Work
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes
3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor
14.1, 15.1.7

Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience
14.4

Termination of the Architect
2.3.3

Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

TIME
8

Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims
3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work
9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK
12

Uncovering of Work
12.1

Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3

Unit Prices
7.3.3.2, 9.1.2

Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site
3.13, 6.1.1, 6.2.1

Values, Schedule of
9.2, 9.3.1

Waiver of Claims by the Architect
13.3.2

Waiver of Claims by the Contractor
9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages
14.2.4, 15.1.7

Waiver of Liens
9.3, 9.10.2, 9.10.4

Waivers of Subrogation
6.1.1, **11.3**

Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays
8.3, 15.1.6.2

Work, Definition of
1.1.3

Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations
4.2.11, 4.2.12

Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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 or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract 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 Owner and a Subcontractor or a Sub-subcontractor, or (2) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's 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.

"Provide" shall mean furnish, fabricate, erect, and completely install, including all necessary labor and incidental materials, including incidental materials, supplies, plans, tools, scaffolding, hoisting, temporary facilities, supervision, inspection, temporary construction, equipment, transportation, services referenced or described, as well as not specifically called for but required to complete the work in accordance with the Contract Documents, shall be furnished by the Contractor complete, in place and ready for use or operation.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 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.

§ 1.1.7 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

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§ 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.

No material change or substitutions shall be made by the Contractor without the prior written approval of the Owner and Architect. The Contractor is responsible for using the full range of its expertise and the expertise of its subcontractors in confirming that the Contract Plans and Specifications are effectively coordinated and constructible. During the course of that effort, or during construction, whenever there are discrepancies between the Drawings and Specifications, or conflicts within the specifications, Contractor shall immediately notify the Owner and Architect in writing and obtain a resolution. The Contractor is expected to furnish and install the better quality or greater quantity and shall comply with the more stringent requirements indicated in accordance with Architect's interpretation at no additional cost to Owner. Items shown on the Drawings and not mentioned in the Specifications shall be of like effect as if shown to be used in any place. Contractor shall immediately notify Owner and Architect in writing and obtain a resolution. The Contractor is expected to furnish the product that would normally be used in this place to produce first quality finished Work subject to the Owner and Architect's approval. Any discrepancy, conflict, ambiguity or inconsistency in the Contract Documents shall be resolved by Owner, in good faith, and the resolution shall be final and binding.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 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.

§ 1.3 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission upon proof of a "received" or "read" receipt.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

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.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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 Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative or such other person who may be designated to act on the Owner's behalf for a specific purpose.

§ 2.1.2 The 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.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 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. If such request is made, then the Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time and other deadlines shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

§ 2.3.2 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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(Paragraph deleted)

§ 2.3.4 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.

§ 2.3.5 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.

§ 2.3.6 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.

§ 2.4 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 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to 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.

§2.4.1 The Owner may declare the Contractor in default for any one or more of the following reasons:

- .1 Failure to complete the Work within the Contract Time, including the dates stated in the Completion Schedule or any update thereof;
- .2 Failure or refusal to comply with an order of the Architect within a reasonable time;
- .3 Failure or refusal to remove rejected materials within 30 days;
- .4 Failure or refusal to correct or replace defective or unacceptable work within 30 days following a directive by the Owner or Architect;
- .5 Failure or refusal to provide a qualified superintendent, competent workers or subcontractors to carry on the Work in an acceptable manner;
- .6 Failure or refusal to pay subcontractors and material suppliers in a timely manner within terms of the Contractor's Subcontract Agreement;
- .7 If the Contractor abandons the Work; and
- .8 Failure to cure any of the foregoing defaults or any other default within the time(s) provided herein.

Nothing in this §2.4.1 shall be construed to limit the Owner's rights or remedies provided elsewhere in this Agreement.

§ 2.5 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 three-day period after receipt of notice from the Owner 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 default or neglect. In such case an appropriate backcharge and credit Change Order shall be issued deducting from payments then or hereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall promptly pay the difference to the Owner within three (3) days of receipt of written request from 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 Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents 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.

§ 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 2.3.4, 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 Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the 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.

§ 3.2.2.1 Contractor will be responsible for diligently reviewing the Contract Documents, in detail (with special attention and care verifying all plan dimensions and coordination among disciplines, etc.), and immediately notify Architect and/or Owner of any discrepancies, coordination issues, information needed, etc. Once a conflict is discovered, Contractor shall notify the Architect and/or Owner and shall not proceed with implementing the Work, without the direction of the Architect and/or Owner. Proceeding with work knowing there is a conflict or that submittal approval for the work has not been obtained shall be at the sole risk and expense of the Contractor.

§ 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 Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 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

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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 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.

§ 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, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 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 or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§3.3.3.1 Work required to be inspected by public authority shall be scheduled and coordinated by the Contractor. Owner shall not be responsible for any cost or delay resulting from delays or failures by Contractor in scheduling and coordinating required inspections or for any delay by any governmental authority in performing inspections.

§ 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.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Owner in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner and in accordance with a Change Order or Construction Change Directive.

§ 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. by Contractor or Subcontractors, including, but not limited to, those who display disruptive behavior, foul language, unnecessary aggression or roughness, failure to pass a random drug test, and persons not properly skilled in tasks assigned to them. Contractor's employees on the Project shall meet all I-9 immigration requirements of Federal law, and Contractor shall require its Subcontractors to implement and enforce policies to ensure that their employees are in compliance with all I-9 requirements. Owner, in its sole discretion, can direct the Contractor to remove any of Contractor's employees or subcontractors from the Project.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the 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 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 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 Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No warranty shall begin to run before Final Completion and acceptance of the Project by Owner.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

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 Unless otherwise provided in the Contract Documents, the Contractor assist in securing the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work, and Owner will pay for such permits, fees, licenses and inspections.

§ 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.

§ 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 attributable to correction.

§ 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 and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect 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 provide an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect 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 and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 INTENTIONALLY DELETED

§ 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 to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 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 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 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.

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§ 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 represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

The Contractor shall not utilize on this Project a Project Manager or superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent or the project manager without the Owner's consent, which shall not be unreasonably withheld or delayed. Contractor understands that management changes and ineffective management can have a negative impact on the Project and Contractor further agrees to promptly correct any management deficiencies at the Owner's request until the Project punchlist has been completed and the Project is acceptable by the Owner, unless Owner finds that superintendent and/or project manager unacceptable or detrimental to the Project. Contractor's resident superintendent shall be assigned solely to the Project and shall not perform any duties or superintendence on any other Project Contractor may have until completion of this Project. Contractor will promptly remove and replace any superintendent or assistant superintendent upon the request of Owner.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner 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.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Construction Schedule shall be a CPM schedule depicting the various portions of the Work, key milestones and a critical path of the Work. The Construction Schedule shall be updated on a monthly basis or as often as required by the City or Architect. The Contractor will provide the Construction Schedule and all updates in native format to Owner and Architect.

§ 3.10.2 The Contractor shall prepare a submittal schedule, after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect'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 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.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and 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.

§ 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.

§ 3.12.2 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 how 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 is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is 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 Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner 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 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 the 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 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.

§ 3.12.9 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 Architect on previous submittals. In the absence of such 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.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

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

§ 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and 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.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner 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 and Architect with access to the Work in preparation and progress wherever located.

§ 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 and Architect harmless from loss on account thereof, but shall not be responsible for 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 or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and the Owner's officers, directors, agents, and employees, Architect, 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, including all such claims, damages, losses, or expenses 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 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.

§ 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 3.18.1 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.

§3.18.3 Notwithstanding anything to the contrary in the Contract Documents, the Contractor shall be responsible to the Owner for any claims, lawsuits, liability or damage arising out of or related to the Work, mold, airborne microorganisms, or the quality of air within the Work or at the site of the Work to the extent that such claim, lawsuit, liability or damages are caused by any acts or omissions on the part of the Contractor, its Subcontractors or suppliers, including, but not limited to, failure to install the Work in accordance with the Contract Documents, or failure to protect existing conditions.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 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. The Architect will not have control over, charge of, or responsibility for the 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.

§ 4.2.3 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 promptly report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and, (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Facilitating Contract Administration

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 Separate Contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. Applications shall be subject to final approval by the Owner and in accordance with the requirements of the Contract Documents. Approval shall not be unreasonably withheld.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.54.2 and 13.54.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, in accordance with the Contractor's approved submittal schedule, 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 within the time frame on the approved submittal schedule. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor, and in no way shall be the responsibility of the Owner, as required by the Contract Documents. The 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 Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the 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.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 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.

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

§ 4.2.12 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 rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and agreed upon by Owner.

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§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests shall not exceed 21 days. 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 a Separate Contractor or the subcontractors of a Separate Contractor.

§ 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.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the building requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect the names of persons or entities (including those who are to furnish materials or equipment) proposed for each portion of the Work, The Owner may reply within 14 days to the Contractor in writing (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner 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 or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate agreement, the Contractor shall bind every Subcontractor and material supplier (and require every subcontractor to so bind its subcontractors and material suppliers) to all the provisions of the Agreement including without limitation, the insurance provisions, and the Contract Documents as they apply to the Owner, Contractor, subcontractor's and material supplier's portions of the Work.

§ 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 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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 45 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon 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.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has 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 and Separate 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 or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor 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 a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor 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, Separate 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

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Owner may clean up and allocate the cost among those responsible. If the Contractor fails to clean up as directed by Owner within 24 hours of written demand by Owner, Owner may perform the required clean-up work and deduct all costs incurred (plus 15% for overhead and profit) from any amount otherwise due Contractor.

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. All changes must be in writing signed by both parties. A change in the Work may not be accomplished by an oral order or directive.

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

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

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Owner, Contractor or Architect and signed by the Owner, Contractor, and Architect 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 Whenever the Contractor requests a Change Order, the Contractor shall submit a Change Order Request and shall provide documentation of labor and material costs in a form satisfactory to the Owner. Any Change Order Request shall identify any impact on the Schedule.

§ 7.2.3 The execution of a Change Order shall constitute full and final compensation to Contractor for all costs or claims relating to the changed Work.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine 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 Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .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, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the 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.

§ 7.3.7 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.

§ 7.3.8 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 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 Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's 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 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 Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Owner has authority to order minor changes in the Work not involving adjustments 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 signed by the Owner agreed to by the 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 The date of commencement of the Work is the date established in the Agreement.

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

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 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, commence the Work prior to the effective date of insurance required 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.

§ 8.3 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner or Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner or Architect may determine. Notwithstanding the foregoing, the Contract Time may only be extended by delays to critical path activities where such delays are not the fault or responsibility of the Contractor. The Contractor's sole remedy for delay, regardless of the cause, shall be an extension of the Contract Time. The Contractor shall not be entitled to any increase in the Contract Sum as a result of any delay to the progress of the Work or completion of the Project. This applies to any claimed delay, acceleration, hindrance, inefficiency, impact cost or the like. Time extensions for weather delays are non-compensable. Notwithstanding the foregoing, the Owner, in the Owner's sole discretion, may agree to provide additional compensation to Contractor for delay encountered by Contractor that is not the fault or responsibility of Contractor.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 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.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect 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. The application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and 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.

§ 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment 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.

§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§9.3.4 If any subcontractor, laborer, materialman of the Contractor, or any other person directly or indirectly acting for, through, or under Contractor files or otherwise perfects a mechanic's lien or claim against the Work, the real property constituting all or part of the Project, or upon Contract funds in the hands of Owner or Lenders, or any part thereof, or against any funds due or to become due from Owner to the Contractor, the Contractor agrees to cause such liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the date of notice thereof. Upon Contractor's failure to do so, the Owner shall have the right, in addition to any and all other rights and remedies provided under the Contract Documents or by law, to cause such liens or claims to be satisfied, removed or discharged by whatever means the Owner chooses at the entire cost and expense of the Contractor (such cost and expense to include legal fees and disbursement). The Contractor agrees to defend, indemnify, protect and hold harmless the Owner, Lender(s) and all persons or entities with ownership or leasehold interest in the Project from and against any and all such liens, claims and actions brought or judgments rendered thereon and from and against any and all loss, damage, liability, cost and expense, including legal fees and disbursements, which the Owner or other parties may sustain or incur in connection therewith.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within 14 days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract

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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 Architect. The issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed 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 Payment

§ 9.5.1 The Architect or Owner may withhold payment, adjust or reject an Application for Payment or nullify a previously approved Application for Payment, in whole or in part, to the extent reasonably necessary to protect the Owner from a loss for which the Contractor may be responsible, including any loss resulting from:

- .1 defective Work not remedied;
- .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;
- .3 failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment;
- .4 reasonable evidence 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;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure of the Contractor to provide executed Release of Waiver and Liens from the Contractor, subcontractors, or material suppliers for Work included in previous Applications for Payment for which the Owner has issued prior payment.

The Owner shall give written notice to the Contractor of the Owner's disapproval or nullification of all or part of an Application for Payment. Such notice shall state the Owner's specific reasons for such disapproval or nullification and the remedial actions the Owner requires the Contractor to take in order to receive payment. When the Contractor has completed the remedial actions to the Owner's satisfaction, the Owner shall promptly pay the amount previously withheld.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier 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 Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect and Owner approves the Contractor's Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents,.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven 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 Architect 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 Architect and Owner 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 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 and suppliers to ascertain whether they have been properly paid. The Owner shall not have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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 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.

§ 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not pay any undisputed amount due the Contractor within 14 days after the date established in the Contract Documents, then the Contractor may, upon seven additional days' written notice to the Owner 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 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 that 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 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. This Work shall be referred to as punch list work. The Owner shall be entitled to withhold 200% of the value of all punch list work, as determined by Owner, until all punch list work has been performed and completed in accordance with the requirements of the Contract Documents and general standards of good workmanship, as determined by Owner.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect 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 Contractor's list, which is not sufficiently complete in accordance with 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 to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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 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 shall 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.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, 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 receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with 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 Architect's final 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.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) 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, claim, security interest, or encumbrance. If such lien, claim, security

interest, or encumbrance 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, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

At the completion of the Project, prior to receiving final payment, the Contractor shall furnish to Owner five (5) sets of Close Out Documents as listed in the Close-Out Documents Log, along with properly signed and notarized "Final Unconditional Waivers of Lien" from all first and second tier Subcontractors and material suppliers that worked or furnished materials for the Project. Such Waivers shall waive and release any and all liens, claims, debts or encumbrances on the Property by the respective Subcontractors and/or Sub-subcontractors, conditional only upon receipt of final payment in an amount to be identified on such Waivers. Owner may elect to utilize joint checks to Contractor, Subcontractors, and/or Sub-subcontractors to effect portions of final payment to Contractor, as Owner deems necessary and/or desirable. The Project Final Inspection by the Architect is intended to be a one-time occurrence. However, if the Project does not pass final inspection on the first visit and the amount of incomplete/unacceptable work requires the Architect to make a return visit and the Architect deems work still incomplete/unacceptable on the 2nd visit, due to no fault of the Owner or Architect, the Contractor shall pay the Owner for expense incurred as a result of a 3rd return visit (if required) by the Architect for approval of the final inspection.

§ 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 Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, 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 the 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 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 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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.

§ 9.10.6 At any time during the performance of this Agreement and for a period of six (6) years after Final Payment under this Agreement, the Owner shall have the right to examine and audit at its cost, through its designated representative, the Contractor's records with respect to all matters related to (i) Change Orders; (ii) Claims; (iii) Applications for Payment; and/or (iv) performance of the Contractor's obligations under the Contract Documents. In the event the Owner identifies an overpayment or improper payment against other amounts otherwise due the Contractor under this Agreement or any other agreement between the Owner and Contractor. If there are not further payments due the Contractor, Contractor shall reimburse the Owner for overpayment or improper payment promptly upon demand.

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.

§ 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, a Subcontractor, or a Sub-subcontractor; and
- .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.

§ 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

§ 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 and 10.2.1.3 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 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either 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 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 the 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 and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the 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 and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities

proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, 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 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 hazardous 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 hazardous 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 reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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 reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

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.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 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.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination 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 that the Architect has not specifically requested to examine prior to its being covered, the 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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 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 any 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 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 2.5.

§ 12.2.2.2 The one-year period for correction of Work 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 of the Owner or Separate Contractors, whether completed or partially completed, 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 that 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 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. In the event that arbitration is selected as the means of dispute resolution, the arbitration proceeding will be governed by the North Carolina Revised Uniform Arbitration Act, not the Federal Arbitration Act.

§ 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. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make 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 the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 No action or failure to act by the Owner, 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 upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 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 Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the 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 Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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 Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 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 Architect.

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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;
- .3 Because 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 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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.

§ 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' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 files a voluntary or involuntary petition for bankruptcy;
- .5 fails to cause any lien to be discharged, terminated, and/or bonded off as required by Section 5.1.10 of the Agreement;
- .6 has made a representation or warranty that is inaccurate, false, or incomplete; or
- .7 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner 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' 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. 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.

§ 14.2.3 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 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. This payment obligation 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 Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under 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 the 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.

§ 14.4.2 Upon receipt of 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;

- .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; and
- .4 assign subcontracts and purchase orders to Owner per Paragraph 5.4

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and reasonable costs of demobilization. Contractor shall not be entitled to payment for any Work not yet executed or lost/anticipated profits.

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, a change in the Contract Time, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, must be initiated by written notice to the other party. Claims by either party must be initiated within seven (7) days after occurrence giving rise to such Claim to allow for proper investigation. In the case of Contractor's claim, the initial written Claim notice shall include the Contractor's best estimate of any increased Cost of the Work or impact to the Project Construction Schedule. The Contractor's failure to provide the Owner with the above-required notice of a Claim within seven (7) days after the occurrence or event giving rise to such Claim will constitute a waiver by the Contractor of its right to seek an increase in GMP, Contract Sum or an extension of Contract Time. This most important requirement for timely written submittal of Contractor's Claim notice may not be overcome or voided by any assertion of actual knowledge by the Contractor.

§ 15.1.3.2 INTENTIONALLY DELETED

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 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. Contractor shall not be entitled to slow down or stop work as a result of any dispute or claim. Contractor acknowledges and agrees that Contractor will continue to diligently prosecute the Work in accordance with the requirements of the construction schedule and Contract Documents pending resolution of any claim or dispute.

§ 15.1.4.2 INTENTIONALLY DELETED

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

§ 15.1.6.2 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 an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, 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 termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, 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. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a 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 the 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, if the Architect 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 receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, 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 Mediation

§ 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 15.1.7, 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 a mediator mutually agreed to by the parties, or in the event the parties cannot agree to a mutually acceptable mediator, then 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 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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 Dispute Resolution

§ 15.4.1 All claims and disputes arising out of or related to this Agreement shall be resolved by litigation or, at the sole discretion of Owner, by arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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. The sole and exclusive venue for any litigation or arbitration shall be Fayetteville, North Carolina.

§ 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.

(Paragraph deleted)

§ 15.4.2 In the event of any arbitration between Owner and Contractor for breach, enforcement or interpretation of this Agreement, or for any other dispute arising out of this Agreement or the Project, the prevailing party shall recover its reasonable costs and attorneys' fees from the party, including all fees of the AAA, compensation of the arbitrator(s) and expert witness fees and costs .

§ 15.4.3 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.

§ 15.4.4 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.

(Paragraphs deleted)

§ 15.4.5 Consolidation or Joinder

§ 15.4.5.1 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).

§ 15.4.5.2 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.

§ 15.4.5.3 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 those of the Owner and Contractor under this Agreement.

Additions and Deletions Report for AIA® Document A201® – 2017

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THE ARCHITECT:CONTRACTOR: PAGE 9

The Contract Documents form the Contract for Construction. The Contract 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 a Subcontractor or a Sub-subcontractor,~~ (3) ~~between the Owner and the Architect or the Architect's consultants,~~ or (4) ~~the Owner and a Subcontractor or a Sub-subcontractor,~~ or (2) between any persons or entities other than the Owner and the Contractor. ~~The Contractor.~~ The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

...

"Provide" shall mean furnish, fabricate, erect, and completely install, including all necessary labor and incidental materials, including incidental materials, supplies, plans, tools, scaffolding, hoisting, temporary facilities, supervision, inspection, temporary construction, equipment, transportation, services referenced or described, as well as not specifically called for but required to complete the work in accordance with the Contract Documents, shall be furnished by the Contractor complete, in place and ready for use or operation.

PAGE 10

No material change or substitutions shall be made by the Contractor without the prior written approval of the Owner and Architect. The Contractor is responsible for using the full range of its expertise and the expertise of its subcontractors in confirming that the Contract Plans and Specifications are effectively coordinated and constructible. During the course of that effort, or during construction, whenever there are discrepancies between the Drawings and Specifications, or conflicts within the specifications, Contractor shall immediately notify the Owner and Architect in writing and obtain a resolution. The Contractor is expected to furnish and install the better quality or greater quantity and shall comply with the more stringent requirements indicated in accordance with Architect's interpretation at no additional cost to Owner. Items shown on the Drawings and not mentioned in the Specifications shall be of like effect as if shown to be used in any place. Contractor shall immediately notify Owner and Architect in writing and obtain a resolution. The Contractor is expected to furnish the product that would normally be used in this place to produce first quality finished Work subject to the Owner and Architect's approval. Any discrepancy, conflict, ambiguity or inconsistency in the Contract Documents shall be resolved by Owner, in good faith, an the resolution shall be final and binding.

PAGE 11

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§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement upon proof of a "received" or "read" receipt.

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~~The parties shall agree upon written protocols governing the transmission and use of, and reliance on, If the parties intend to transmit Instruments of Service or any other information or documentation in digital form form they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.~~

...

§ 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 Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized ~~representative representative or such other person who may be designated to act on the Owner's behalf for a specific purpose.~~

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~~§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor 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. The If such request is made, then the Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time and other deadlines shall be extended appropriately.~~

PAGE 12

~~§ 2.3.1 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 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.~~

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INTENTIONALLY DELETED

~~§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~

...

~~§2.4.1 The Owner may declare the Contractor in default for any one or more of the following reasons:~~

- ~~1 Failure to complete the Work within the Contract Time, including the dates stated in the Completion Schedule or any update thereof;~~
- ~~2 Failure or refusal to comply with an order of the Architect within a reasonable time;~~
- ~~3 Failure or refusal to remove rejected materials within 30 days;~~
- ~~4 Failure or refusal to correct or replace defective or unacceptable work within 30 days following a directive by the Owner or Architect;~~

- 5 Failure or refusal to provide a qualified superintendent, competent workers or subcontractors to carry on the Work in an acceptable manner;
- 6 Failure or refusal to pay subcontractors and material suppliers in a timely manner within terms of the Contractor's Subcontract Agreement;
- 7 If the Contractor abandons the Work; and
- 8 Failure to cure any of the foregoing defaults or any other default within the time(s) provided herein.

Nothing in this §2.4.1 shall be construed to limit the Owner's rights or remedies provided elsewhere in this Agreement.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten day~~ three-day period after receipt of notice from the Owner 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 default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the~~ In such case an appropriate backcharge and credit Change Order shall be issued deducting from payments then or hereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15 promptly pay the difference to the Owner within three (3) days of receipt of written request from Owner.

PAGE 13

§ 3.1.3 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 in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.~~

...

§ 3.2.2.1 Contractor will be responsible for diligently reviewing the Contract Documents, in detail (with special attention and care verifying all plan dimensions and coordination among disciplines, etc.), and immediately notify Architect and/or Owner of any discrepancies, coordination issues, information needed, etc. Once a conflict is discovered, Contractor shall notify the Architect and/or Owner and shall not proceed with implementing the Work, without the direction of the Architect and/or Owner. Proceeding with work knowing there is a conflict or that submittal approval for the work has not been obtained shall be at the sole risk and expense of the Contractor.

§ 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 ~~submit~~ 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, ~~subject to Section 15.1.7,~~ 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.

PAGE 14

§3.3.3.1 Work required to be inspected by public authority shall be scheduled and coordinated by the Contractor. Owner shall not be responsible for any cost or delay resulting from delays or failures by Contractor in scheduling and coordinating required inspections or for any delay by any governmental authority in performing inspections.

...

~~§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section authorized by the Owner 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 Owner and in accordance with a Change Order or Construction Change Directive.~~

~~§ 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. by Contractor or Subcontractors, including, but not limited to, those who display disruptive behavior, foul language, unnecessary aggression or roughness, failure to pass a random drug test, and persons not properly skilled in tasks assigned to them. Contractor's employees on the Project shall meet all I-9 immigration requirements of Federal law, and Contractor shall require its Subcontractors to implement and enforce policies to ensure that their employees are in compliance with all I-9 requirements. Owner, in its sole discretion, can direct the Contractor to remove any of Contractor's employees or subcontractors from the Project.~~

...

~~§ 3.5.1 The Contractor warrants to the Owner 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 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 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 Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No warranty shall begin to run before Final Completion and acceptance of the Project by Owner.~~

PAGE 15

~~§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for assist in securing the building permit as well as 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 are received or negotiations concluded. Work, and Owner will pay for such permits, fees, licenses and inspections.~~

...

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 and the Architect before conditions are disturbed and in no event later than ~~14~~ seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect 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 that provide~~ an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect 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 and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim proceed as provided in Article 15.

~~§ 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 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.~~

~~INTENTIONALLY DELETED~~

PAGE 16

The Contractor shall not utilize on this Project a Project Manager or superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent or the project manager without the Owner's consent, which shall not be unreasonably withheld or delayed. Contractor understands that management changes and ineffective management can have a negative impact on the Project and Contractor further agrees to promptly correct any management deficiencies at the Owner's request until the Project punchlist has been completed and the Project is acceptable by the Owner, unless Owner finds that superintendent and/or project manager unacceptable or detrimental to the Project. Contractor's resident superintendent shall be assigned solely to the Project and shall not perform any duties or superintendence on any other Project Contractor may have until completion of this Project. Contractor will promptly remove and replace any superintendent or assistant superintendent upon the request of Owner.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Construction Schedule shall be a CPM schedule depicting the various portions of the Work, key milestones and a critical path of the Work. The Construction Schedule shall be updated on a monthly basis or as often as required by the City or Architect. The Contractor will provide the Construction Schedule and all updates in native format to Owner and Architect.

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

...

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, 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 the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed one copy of approved Shop Drawings, Product Data, Samples and similar required submittals.

PAGE 17

§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect informed the 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.

PAGE 18

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably

encumber the site with materials or equipment. Contractor shall not damage or disturb adjacent or surrounding properties.

PAGE 19

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and the Owner's officers, directors, agents, and employees, Architect, 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 including all such claims, damages, losses, or expenses~~ 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 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.

...

§3.18.3 Notwithstanding anything to the contrary in the Contract Documents, the Contractor shall be responsible to the Owner for any claims, lawsuits, liability or damage arising out of or related to the Work, mold, airborne microorganisms, or the quality of air within the Work or at the site of the Work to the extent that such claim, lawsuit, liability or damages are caused by any acts or omissions on the part of the Contractor, its Subcontractors or suppliers, including, but not limited to, failure to install the Work in accordance with the Contract Documents, or failure to protect existing conditions.

...

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

...

§ 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. The Architect will not have control over, charge of, or responsibility for the 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.~~ Documents, except as provided in Section 3.3.1.

§ 4.2.3 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 promptly report to the Owner (1) known deviations from the Contract ~~Documents, (2) known deviations~~ Documents and from the most recent construction schedule submitted by the Contractor, ~~and (3) and, (2)~~ defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

~~The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project.~~ **Communications Facilitating Contract Administration**

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 Separate Contractors shall be through the Owner. ~~The Contract Documents may specify other communication protocols.~~

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. Applications shall be subject to final approval by the Owner and in accordance with the requirements of the Contract Documents. Approval shall not be unreasonably withheld.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections ~~13.4.2 and 13.4.3, 13.54.2 and 13.54.3,~~ whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, in accordance with the Contractor's approved submittal schedule, 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—within the time frame on the approved submittal schedule. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain ~~the responsibility of the Contractor~~ the responsibility of the Contractor, and in no way shall be the responsibility of the Owner, as required by the Contract Documents. The 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 Architect's review shall not constitute approval of safety precautions ~~or or, unless otherwise specifically stated by the 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.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may ~~order~~ authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

PAGE 20

§ 4.2.10 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives. Such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.~~

...

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents.~~ Documents and agreed upon by Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests ~~will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. shall not exceed 21 days.~~ If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

PAGE 21

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

...

~~By appropriate written agreement, 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 the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner 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. agreement, the Contractor shall bind every Subcontractor and material supplier (and require every subcontractor to so bind its subcontractors and material suppliers) to all the provisions of the Agreement including without limitation, the insurance provisions, and the Contract Documents as they apply to the Owner, Contractor, subcontractor's and material supplier's portions of the Work.~~

...

- ~~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; and~~

...

~~§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30-45 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.~~

PAGE 22

~~If a dispute arises among the Contractor, Separate 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 Architect will allocate the cost among those responsible. If the Contractor fails to clean up as directed by Owner within 24 hours of written demand by Owner, Owner may perform the required clean-up work and deduct all costs incurred (plus 15% for overhead and profit) from any amount otherwise due Contractor.~~

PAGE 23

~~§ 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. All changes must be in writing signed by both parties. A change in the Work may not be accomplished by an oral order or directive.~~

~~§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Owner and the Contractor, and Architect. A Construction Change Directive requires agreement by the Owner 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, may or may not be agreed to by the Contractor.~~

...

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

...

- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Whenever the Contractor requests a Change Order, the Contractor shall submit a Change Order Request and shall provide documentation of labor and material costs in a form satisfactory to the Owner. Any Change Order Request shall identify any impact on the Schedule.

§ 7.2.3 The execution of a Change Order shall constitute full and final compensation to Contractor for all costs or claims relating to the changed Work.

PAGE 24

~~The Architect may Owner has authority to order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time not involving adjustments 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 signed by the Owner agreed to by the Contractor.~~

PAGE 25

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required 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.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner or Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner or Architect may determine. Notwithstanding the foregoing, the Contract Time may only be extended by delays to critical path activities where such delays are not the fault or responsibility of the Contractor. The Contractor's sole remedy for delay, regardless of the cause, shall be an extension of the Contract Time. The Contractor shall not be entitled to any increase in the Contract Sum as a result of any delay to the progress of the Work or completion of the Project. This applies to any claimed delay, acceleration, hindrance, inefficiency, impact cost or the like. Time extensions for weather delays are non-compensable. Notwithstanding the foregoing, the Owner, in the Owner's sole discretion, may agree to provide additional compensation to Contractor for delay encountered by Contractor that is not the fault or responsibility of Contractor.

PAGE 26

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect 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. The application shall be ~~notarized, if required, notarized~~ and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and 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 Architect, but not yet included in Change Orders.~~ Directives.

...

§9.3.4 If any subcontractor, laborer, materialman of the Contractor, or any other person directly or indirectly acting for, through, or under Contractor files or otherwise perfects a mechanic's lien or claim against the Work, the real property constituting all or part of the Project, or upon Contract funds in the hands of Owner or Lenders, or any part thereof, or against any funds due or to become due from Owner to the Contractor, the Contractor agrees to cause such liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the date of notice thereof. Upon Contractor's failure to do so, the Owner shall have the right, in addition to any and all other rights and remedies provided under the Contract Documents or by law, to cause such liens or claims to be satisfied, removed or discharged by whatever means the Owner chooses at the entire cost and expense of the Contractor (such cost and expense to include legal fees and disbursement). The Contractor agrees to defend, indemnify, protect and hold harmless the Owner, Lender(s) and all persons or entities with ownership or leasehold interest in the Project from and against any and all such liens, claims and actions brought or judgments rendered thereon and from and against any and all loss, damage, liability, cost and expense, including legal fees and disbursements, which the Owner or other parties may sustain or incur in connection therewith.

§ 9.4.1 The Architect will, within ~~seven~~ 14 days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; ~~or (2) issue to the Owner a Certificate for Payment Contractor,~~ for such amount as the Architect determines is properly due, ~~and~~ or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; ~~or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1-whole or in part as provided in Section 9.5.~~

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations 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 Architect. ~~However, the~~ The issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed 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 ~~Payment~~

§ 9.5.1 The Architect may withhold a Certificate for Payment ~~or Owner may withhold payment, adjust or reject an Application for Payment or nullify a previously approved Application for Payment,~~ in whole or in part, to the extent reasonably necessary to protect the Owner, ~~if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for~~

~~Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of Owner from a loss for which the Contractor may be responsible, including any loss resulting from:~~

PAGE 27

- .3 failure of the Contractor to make payments properly to Subcontractors ~~or suppliers~~ for labor, materials or equipment;
- .4 reasonable evidence ~~that~~ the Work cannot be completed for the unpaid balance of the Contract Sum;

...

- .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 repeated failure to carry out the Work in accordance with the Contract ~~Documents. Documents; or~~
- .8 failure of the Contractor to provide executed Release of Waiver and Liens from the Contractor, subcontractors, or material suppliers for Work included in previous Applications for Payment for which the Owner has issued prior payment.

The Owner shall give written notice to the Contractor of the Owner's disapproval or nullification of all or part of an Application for Payment. Such notice shall state the Owner's specific reasons for such disapproval or nullification and the remedial actions the Owner requires the Contractor to take in order to receive payment. When the Contractor has completed the remedial actions to the Owner's satisfaction, the Owner shall promptly pay the amount previously withheld.

...

~~§ 9.6.1 After the Architect has issued a Certificate and Owner approves the Contractor's Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Documents.~~

PAGE 28

~~§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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 and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall.~~ The Owner shall not have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

...

~~§ 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.~~

...

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven pay any undisputed amount due the Contractor within 14 days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~

...

§ 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 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. This Work shall be referred to as punch list work. The Owner shall be entitled to withhold 200% of the value of all punch list work, as determined by Owner, until all punch list work has been performed and completed in accordance with the requirements of the Contract Documents and general standards of good workmanship, as determined by Owner.
PAGE 29

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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, 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 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as ~~receipts and 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, claim, security interest, or encumbrance. If ~~a such~~ lien, claim, security interest, or encumbrance 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 ~~the such~~ lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

At the completion of the Project, prior to receiving final payment, the Contractor shall furnish to Owner five (5) sets of Close Out Documents as listed in the Close-Out Documents Log, along with properly signed and notarized "Final Unconditional Waivers of Lien" from all first and second tier Subcontractors and material suppliers that worked or furnished materials for the Project. Such Waivers shall waive and release any and all liens, claims, debts or encumbrances on the Property by the respective Subcontractors and/or Sub-subcontractors, conditional only upon receipt of final payment in an amount to be identified on such Waivers. Owner may elect to utilize joint checks to Contractor, Subcontractors, and/or Sub-subcontractors to effect portions of final payment to Contractor, as Owner deems necessary and/or desirable. The Project Final Inspection by the Architect is intended to be a one-time occurrence. However, if the Project does not pass final inspection on the first visit and the amount of incomplete/unacceptable work requires the Architect to make a return visit and the Architect deems work still incomplete/unacceptable on the 2nd visit, due to no fault of the Owner or Architect, the Contractor shall pay the Owner for expense incurred as a result of a 3rd return visit (if required) by the Architect for approval of the final inspection.
PAGE 30

§ 9.10.6 At any time during the performance of this Agreement and for a period of six (6) years after Final Payment under this Agreement, the Owner shall have the right to examine and audit at its cost, through its designated representative, the Contractor's records with respect to all matters related to (i) Change Orders; (ii) Claims; (iii) Applications for Payment; and/or (iv) performance of the Contractor's obligations under the Contract Documents. In the event the Owner identifies an overpayment or improper payment against other amounts otherwise due the Contractor under this Agreement or any other agreement between the Owner and Contractor. If there are not further payments due the Contractor, Contractor shall reimburse the Owner for overpayment or improper payment promptly upon demand.

PAGE 31

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 the 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.

PAGE 33

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this ~~section~~ Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

PAGE 35

The Contract shall be governed by the law of the place where the Project is located, ~~excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ located. In the event that arbitration is selected as the means of dispute resolution, the arbitration proceeding will be governed by the North Carolina Revised Uniform Arbitration Act, not the Federal Arbitration Act.

PAGE 37

- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- 4 files a voluntary or involuntary petition for bankruptcy;
- 5 fails to cause any lien to be discharged, terminated, and/or bonded off as required by Section 5.1.10 of the Agreement;
- 6 has made a representation or warranty that is inaccurate, false, or incomplete; or
- ~~4~~ 7 otherwise is guilty of substantial breach of a provision of the Contract Documents.

...

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the 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 be certified by the Initial Decision Maker, upon application, and this obligation for payment. This payment obligation shall survive termination of the Contract.~~

...

- .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;~~ subcontracts and purchase orders; and
- 4 assign subcontracts and purchase orders to Owner per Paragraph 5.4

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and ~~the termination fee, if any, set forth in the Agreement.~~ reasonable costs of demobilization. Contractor shall not be entitled to payment for any Work not yet executed or lost/anticipated profits.

PAGE 38

§ 15.1.3.1 Claims by either the Owner or Contractor, ~~where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after~~

occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, must be initiated by written notice to the other party. Claims by either party must be initiated within seven (7) days after occurrence giving rise to such Claim to allow for proper investigation. In the case of Contractor's claim, the initial written Claim notice shall include the Contractor's best estimate of any increased Cost of the Work or impact to the Project Construction Schedule. The Contractor's failure to provide the Owner with the above-required notice of a Claim within seven (7) days after the occurrence or event giving rise to such Claim will constitute a waiver by the Contractor of its right to seek an increase in GMP, Contract Sum or an extension of Contract Time. This most important requirement for timely written submittal of Contractor's Claim notice may not be overcome or voided by any assertion of actual knowledge by the Contractor.

~~§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.~~INTENTIONALLY DELETED

...

§ 15.1.4.1 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. Contractor shall not be entitled to slow down or stop work as a result of any dispute or claim. Contractor acknowledges and agrees that Contractor will continue to diligently prosecute the Work in accordance with the requirements of the construction schedule and Contract Documents pending resolution of any claim or dispute.

~~§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~INTENTIONALLY DELETED

PAGE 39

- 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~~

PAGE 40

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by a mediator mutually agreed to by the parties, or in the event the parties cannot agree to a mutually acceptable mediator, then 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.

...

§ 15.4 Arbitration Dispute Resolution

~~§ 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 All claims and disputes arising out of or related to this Agreement shall be resolved by litigation or, at the sole discretion of Owner, by arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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. The sole and exclusive venue for any litigation or arbitration shall be Fayetteville, North Carolina.

PAGE 41

~~§ 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.~~

§ 15.4.2 In the event of any arbitration between Owner and Contractor for breach, enforcement or interpretation of this Agreement, or for any other dispute arising out of this Agreement or the Project, the prevailing party shall recover its reasonable costs and attorneys' fees from the party, including all fees of the AAA, compensation of the arbitrator(s) and expert witness fees and costs.

~~§ 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 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.~~

~~§ 15.4.4 Consolidation or Joinder 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.~~

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.~~

§ 15.4.5 Consolidation or Joinder

§ 15.4.5.1 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).

§ 15.4.5.2 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.

§ 15.4.5.3 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 those of the Owner and Contractor under this Agreement.

~~§ 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 those of the Owner and Contractor under this Agreement.~~

Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:23:55 ET on 07/04/2024 under Order No. 2114474241 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

FORMS

PERFORMANCE BOND

Date of Contract: _____

Date of Execution: _____

Name/Address of Principal: _____

Name/Address of Surety: _____

Name/Address of Contracting Body: _____

Amount of Bond (Printed): _____

Project: **Mazarick Tennis Center Tennis Sitework**

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, identified as shown above and hereto attached:

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ counterparts.

Witness:

(Contractor: Trade or Corporate Name)

(Proprietorship or Partnership)

By: _____

Title: _____
(Owner, Partner, or Corp. Pres. or
Vice Pres. Only)

Attest: (Corporation)

By: _____

Title: _____
(Corp Sec or Ass't Sec Only)

(Corporate Seal)

Witness:

(Surety Company)

By: _____

Title: _____
(Attorney in Fact)

Countersigned:

(N.C. Licensed Resident Agent)

(Name and Address - Surety Agency)

(Surety Company Name and NC Regional
or Branch Office Address)

(Surety Corporate Seal)

PAYMENT BOND

Date of Contract: _____

Date of Execution: _____

Name/Address of Principal: _____

Name/Address of Surety: _____

Name/Address of Contracting Body: _____

Amount of Bond (Printed): _____

Project: **Mazarick Tennis Center Tennis Sitework**

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, identified as shown above and hereto attached:

NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in Counterparts

Witness:

(Contractor: Trade or Corporate Name)

(Proprietorship or Partnership)

By: _____

Title: _____
(Owner, Partner, or Corp. Pres. or
Vice Pres. Only)

Attest: (Corporation)

By: _____

Title: _____
(Corp Sec or Ass't Sec Only)

(Corporate Seal)

Witness:

(Surety Company)

By: _____

Title: _____
(Attorney in Fact)

Countersigned:

(N.C. Licensed Resident Agent)

(Name and Address - Surety Agency)

(Surety Company Name and NC Regional
or Branch Office Address)

(Surety Corporate Seal)

POWER OF ATTORNEY

(ATTACH)

CERTIFICATE(S) OF INSURANCE

(ATTACH)

North Carolina Reimbursable Sales and Use Tax Statement by Subcontractor

Project		Project Number	
Owner			
Contractor			
Engineer			

Project County Cumberland **Application No.** _____ **Application Period** _____ to _____

Purchase Date	Vendor	Type of Property	County*	Invoice No.	Invoice Amount	State Tax Paid	County Tax Paid	Total Tax Paid
Totals								

** For property purchased in N.C., enter the county in which property was purchased. For property purchased in other states, enter the N.C. county in which property was used.*

The undersigned individual certifies that: (1) he or she is an employee or principal of the Subcontractor that is submitting this form with the Contractor so that the Contractor may request reimbursement for North Carolina state and local sales and use taxes that the Subcontractor has paid; (2) the above listed vendors were paid sales tax upon purchases of building materials during the period covered by the Application for Payment, and the property upon which such taxes were paid with or will be used in the performance of this Contract; (3) no tax on purchases or rentals of tools and/or equipment is included in the above list; (4) all of the material above became a part of the Work constructed for this Project; and (5) all of the information on this form, and any additional pages added to this page, if any, is true and accurate.

Subcontractor _____ **Signature** _____ **Date** _____

00 45 04 STATE SALES TAX REQUIREMENTS

ARTICLE 1 – PROCEDURE FOR REPORTING NORTH CAROLINA SALES TAX EXPENDITURES

- 1.01 The following procedure for handling the North Carolina sales tax is applicable to this Project. The Contractor and its Subcontractors must comply fully with the requirements outlined in this Section, so that the Owner may recover the full amount of reimbursable taxes permitted by state law. For the purposes of this Section, “sales taxes” means sales and use taxes paid to the State of North Carolina or to local governments in North Carolina.
- 1.02 Reimbursable sales taxes are to be excluded from the Bid or Proposal for this Project. Contractor must include all other applicable sales and use taxes and other related costs in its Bid or Proposal.
- 1.03 Owner is entitled to refunds from the State of North Carolina for these reimbursable sales taxes. The Contractor that performs Work under this Contract is allowed to obtain a reimbursement from the Owner for those sales taxes for which the State will grant a refund to the Owner. The Owner will reimburse the Contractor, and the Owner later obtains a refund from the State.
- 1.04 Contractor must furnish the Owner documentary evidence showing the materials used and sales tax paid by the Contractor and each Subcontractor. Any county sales tax included in the Contractor’s statements must be shown separately from the state sales tax. If more than one county is shown, each county must be listed separately.
- 1.05 The documentary evidence must be in the form of the Reimbursable Sales and Use Tax Statement provided by the Engineer. This evidence must consist of a certified statement, by the Contractor and each Subcontractor individually, showing total purchases of materials from each separate vendor and total sales taxes by each county paid each vendor. The certified statement must show the invoice number(s) covered and inclusive dates of such invoices. State sales tax must be listed separately from county sales tax. If more than one county is shown, each county must be listed separately. The invoices must be provided to substantiate the information on the statement.
- 1.06 Materials used from the warehouse stock of the Contractor or its Subcontractors must be shown in a certified statement at warehouse stock prices.
- 1.07 Contractor will not be required to certify Subcontractor statements. However, any Subcontractor may submit for reimbursement by certifying a Reimbursable Sales and Use Tax Statement, submitting it to the Contractor for the Contractor to submit with the pay application for the properties listed on that form. The Owner will make the reimbursement payable to the Contractor.
- 1.08 The documentary evidence to be furnished to owners eligible for reimbursable sales tax refunds covers sales and/or use taxes paid on building materials used by contractors and subcontractors in the performance of contracts with churches, orphanages, hospitals not for profit, educational institutions not operated for profit and other charitable or religious institutions or organizations not operated for profit and incorporated cities, towns and counties in this State. The documentary evidence is to be submitted to the above-named institutions, organizations and governmental units to be included in claims for refunds to be prepared and submitted by them to obtain refunds provided by NCGS §105-164.14 and is to include the purchase of building materials, supplies, fixtures and equipment which become a part of or annexed to buildings or

structures being erected, altered or repaired under contracts with such institutions, organizations or governmental units.

- 1.09 Contractor may seek reimbursement separately from, but at the same time as, the Application for Payment is made for the properties that were taxed. The Contractor must not file for reimbursement for sales taxes before the Contractor has the right to file an Application for Payment for the properties that were taxed.
- 1.10 If the State refuses to refund any such sales tax to the Owner, or if after a refund is made, the Owner is told to return a refund to the State, the Contractor must upon demand repay the Owner for the amount of the failed refunds.
- 1.11 Contractor is advised that all requests for payment, partial or final, for Work completed under this Contract must include a sales tax report submitted in accordance with the procedures outlined above.
- 1.12 Contractor to whom an award is made on this Project will be required to follow the procedure outlined above.

END OF SECTION

NOTICE OF AWARD

Date of Issuance: [Date]
Owner: City of Fayetteville, NC Owner’s Project No.:
Engineer: [Engineer of Record] Engineer’s Project No.:
Project: [Project Title]
Contract Name: Contract for the Construction of [Project]
Bidder:
Bidder’s Address:

You are notified that Owner has accepted your Bid dated [date] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[Describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is \$[Contract Price]. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, and Unit Price Work.

[Number of copies sent] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within **15 days** of the date of receipt of this Notice of Award:

1. Deliver to Owner [number of copies sent] counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): **[Describe other conditions that require Successful Bidder’s compliance]**

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 15 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions and modified by Supplementary Conditions

Owner: **The City of Fayetteville, North Carolina**

By (signature): _____

Name
(printed): _____

Title: _____

Contractor: _____

By (*signature*): _____

Name
(*printed*): _____

Title: _____

Copy: Engineer

NOTICE TO PROCEED

Owner: City of Fayetteville, North Carolina Owner's Project No.: _____
Engineer: _____ Engineer's Project No.: _____
Contractor: _____ Contractor's Project No.: _____
Project: _____
Contract Name: _____
Effective Date of Contract: _____

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on **[date Contract Times are to start]** pursuant to Paragraph 4.01 of the General Conditions.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement: **[Select one of the following two alternatives, insert dates or number of days, and delete the other alternative.]**

The date by which Substantial Completion must be achieved is **[date for Substantial Completion, from Agreement]**, and the date by which readiness for final payment must be achieved is **[date for readiness, from Agreement]**.

[or]

The number of days to achieve Substantial Completion is **[number of days, from Agreement]** from the date stated above for the commencement of the Contract Times, resulting in a date for Substantial Completion of **[date, calculated from commencement date above]**; and the number of days to achieve readiness for final payment is **[number of days, from Agreement]** from the commencement date of the Contract Times, resulting in a date for readiness for final payment of **[date, calculated from commencement date above]**.

Before starting any Work at the Site, Contractor must comply with the following:

[Note any access limitations, security procedures, or other restrictions]

Owner: City of Fayetteville, North Carolina
By *(signature)*: _____
Name *(printed)*: _____
Title: _____
Date Issued: _____

Contractor: _____

By (*signature*): _____

Name (*printed*): _____

Copy: Engineer

NOTICE OF ACCEPTABILITY OF WORK

Owner: City of Fayetteville, North Carolina Owner's Project No.:
Engineer: Engineer's Project No.:
Contractor: Contractor's Project No.:
Project:
Contract Name:
Notice Date: Effective Date of the Construction Contract:

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated **[date of professional services agreement]** ("Owner-Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature): _____
Name (printed): _____
Title: _____

AIA® Document G702® – 1992

Application and Certificate for Payment

TO OWNER:	PROJECT:	APPLICATION NO: 001	Distribution to:
		PERIOD TO:	OWNER: <input type="checkbox"/>
FROM CONTRACTOR:	VIA ARCHITECT:	CONTRACT FOR: General Construction	ARCHITECT: <input type="checkbox"/>
		CONTRACT DATE:	CONTRACTOR: <input type="checkbox"/>
		PROJECT NOS: / / City of Fayetteville	FIELD: <input type="checkbox"/>
			OTHER: <input type="checkbox"/>

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. AIA Document G703®, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM	0.00
2. NET CHANGE BY CHANGE ORDERS	0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2)	0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	0.00
5. RETAINAGE:	
a. 0 % of Completed Work (Column D + E on G703)	0.00
b. 0 % of Stored Material (Column F on G703)	0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	0.00
6. TOTAL EARNED LESS RETAINAGE	0.00
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	0.00
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE	
(Line 3 less Line 6)	0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	0.00	0.00
Total approved this Month	0.00	0.00
TOTALS	0.00	0.00
NET CHANGES by Change Order		0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:
 By: _____ Date: _____
 State of: _____
 County of: _____
 Subscribed and sworn to before
 me this _____ day of _____

Notary Public:
 My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED 0.00
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
 By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



AIA® Document G714® – 2017

Construction Change Directive

PROJECT: *(name and address)*

CONTRACT INFORMATION:

CCD INFORMATION:

Contract For:

Directive Number:

Date:

Date:

OWNER: *(name and address)*

ARCHITECT: *(name and address)*

CONTRACTOR: *(name and address)*

The Contractor is hereby directed to make the following change(s) in this Contract:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits.)

PROPOSED ADJUSTMENTS

1. The proposed basis of adjustment to the Contract Sum or Guaranteed Maximum Price is:

Lump Sum decrease of \$0.00

Unit Price of \$ per

Cost, as defined below, plus the following fee:
(Insert a definition of, or method for determining, cost)

As follows:

2. The Contract Time is proposed to . The proposed adjustment, if any, is .

NOTE: The Owner, Architect and Contractor should execute a Change Order to supersede this Construction Change Directive to the extent they agree upon adjustments to the Contract Sum, Contract Time, or Guaranteed Maximum price for the change(s) described herein.

When signed by the Owner and Architect and received by the Contractor, this document becomes effective IMMEDIATELY as a Construction Change Directive (CCD), and the Contractor shall proceed with the change(s) described above.

Contractor signature indicates agreement with the proposed adjustments in Contract Sum and Contract Time set forth in this CCD.

ARCHITECT *(Firm name)*

OWNER *(Firm name)*

CONTRACTOR *(Firm name)*

SIGNATURE

SIGNATURE

SIGNATURE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

DATE

DATE

DATE



AIA® Document G701® – 2017

Change Order

PROJECT: *(Name and address)*
Mazarick Park Tennis Center Tennis
Sitework

CONTRACT INFORMATION:
Contract For: General Construction
Date:

CHANGE ORDER INFORMATION:
Change Order Number: 001
Date:

OWNER: *(Name and address)*

ARCHITECT: *(Name and address)*

CONTRACTOR: *(Name and address)*

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

The original Contract Sum was	\$	_____	0.00
The net change by previously authorized Change Orders	\$	_____	0.00
The Contract Sum prior to this Change Order was	\$	_____	0.00
The Contract Sum will be increased by this Change Order in the amount of	\$	_____	0.00
The new Contract Sum including this Change Order will be	\$	_____	0.00

The Contract Time will be increased by Zero (0) days.
The new date of Substantial Completion will be

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT *(Firm name)*

CONTRACTOR *(Firm name)*

OWNER *(Firm name)*

SIGNATURE

SIGNATURE

SIGNATURE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

DATE

DATE

DATE

 **AIA**® Document G704® – 2017

Certificate of Substantial Completion

PROJECT: *(name and address)*

CONTRACT INFORMATION:

Contract For:

Date:

CERTIFICATE INFORMATION:

Certificate Number: 001

Date:

OWNER: *(name and address)*

ARCHITECT: *(name and address)*

CONTRACTOR: *(name and address)*

The Work identified below has been reviewed and found, to the Architect’s best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.
(Identify the Work, or portion thereof, that is substantially complete.)

ARCHITECT *(Firm Name)*

SIGNATURE

PRINTED NAME AND TITLE

DATE OF SUBSTANTIAL COMPLETION

WARRANTIES

The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:
(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)

WORK TO BE COMPLETED OR CORRECTED

A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:
(Identify the list of Work to be completed or corrected.)

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within () days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: \$

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:
(Note: Owner’s and Contractor’s legal and insurance counsel should review insurance requirements and coverage.)

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion:

CONTRACTOR *(Firm Name)*

SIGNATURE

PRINTED NAME AND TITLE

DATE

OWNER *(Firm Name)*

SIGNATURE

PRINTED NAME AND TITLE

DATE

CONDITIONAL PARTIAL WAIVER BY GENERAL CONTRACTOR

The undersigned, for and in consideration of payment in the amount of \$ _____, which amount is detailed by Application for Payment No. _____ dated _____ and is the full and final amount owed the undersigned through the period to date of _____ ("Period To Date"), and for other good and valuable consideration the sufficiency of which is hereby acknowledged, does hereby waive, release and relinquish any and all lien rights arising out of or related to the performance of work or the furnishing of labor or materials by the undersigned pursuant to a contract (the "Prime Contract") with _____ ("Owner") to the extent of payment received in connection with the following project:

(the "Project")

Except as specifically described below, this Conditional Partial Waiver by General Contractor ("Partial Waiver") applies to all lien rights to the extent of payment received

This Partial Waiver is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Partial Waiver, that it is fully informed with respect to the legal effect of this Partial Waiver and that it has voluntarily chosen to accept the terms and conditions set forth herein in return for the payment recited above.

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out of its work on the Project through the Period To Date have been fully paid or satisfied or will be fully paid or satisfied within seven (7) days of the undersigned's receipt of the payment referenced in this Partial Waiver including, but not limited to, the following:

- Employees, laborers, material men, and subcontractors employed by the undersigned;
- Labor, materials, equipment and supplies furnished by others to the undersigned;
- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

With respect to the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Owner from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied or does not fully pay or satisfy its obligations on the Project as represented and warranted in this Partial Waiver.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

Initial: _____/Date: _____

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument this the _____ day of _____, 20_____.

FOR GENERAL CONTRACTOR:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this _____ day of _____, 20_____.

Notary Public
My Commission Expires: _____

Initial: _____/Date: _____

UNCONDITIONAL PARTIAL LIEN WAIVER AND RELEASE TO OWNER

The undersigned acknowledges receipt of \$ _____ paid by _____ (the "Owner"), which amount is detailed by Payment Request No. _____ dated _____, on account of labor, materials, equipment and services furnished for the improvement of the following project:

(the "Project")

The undersigned does hereby fully waive and release any and all lien rights it has to the extent of the payment referenced above for labor, materials, and services furnished to the Project.

This Unconditional Partial Lien Waiver and Release to Owner ("Partial Lien Waiver and Release") is intended to waive and release any and all lien rights with regard to the sums referenced herein and is not intended, nor shall it be construed, to alter, amend, modify, or revise the date upon which labor or materials were first furnished (or last furnished) for any purposes of Chapter 44A of the North Carolina General Statutes, including, but not limited to, determining priority of interests in the real property being improved.

This Partial Lien Waiver and Release is freely and voluntarily given, and the undersigned warrants and represents that it has fully reviewed the terms and conditions of this Partial Lien Waiver and Release, that it is fully informed with respect to the legal effect of this Partial Lien Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Partial Lien Waiver and Release.

SIGNED this _____ day of _____, 20____.

COMPANY NAME

Name

Its: _____
(Title)

SWORN TO AND SUBSCRIBED before me

this the _____ day of _____, 20____.

Notary Public for _____

My Commission Expires: _____

CONDITIONAL FINAL WAIVER AND RELEASE BY GENERAL CONTRACTOR

The undersigned, for and in consideration of payment in the amount of \$ _____, which is the full and final amount due the undersigned as detailed by Application for Payment No. _____, dated _____ and for other good and valuable consideration the sufficiency of which is hereby acknowledged, does hereby waive, release and relinquish any and all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of or related to the performance of work or the furnishing of labor or materials by the undersigned pursuant to a contract (the "Prime Contract") with _____ (the "Owner") in connection with the following project:

(the "Project")

Use of the term "Contractor," hereinafter, shall be deemed to mean and refer to the Contractor, Company and its agents, representatives, employees, directors, and all those acting on their behalf.

This Conditional Final Waiver and Release by General Contractor ("Final Waiver & Release) applies to all claims for additional compensation or time extensions arising from or related to any and all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to the date of this document. The undersigned expressly waives any and all claims, liens, demands and causes of action against Owner and the real property upon which the Project is located.

This Final Waiver and Release is intended to apply to and protect Owner in connection with any claim, demand, lien, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Final Waiver and Release.

This Final Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Final Waiver and Release, that it is fully informed with respect to the legal effect of this Final Waiver and Release and that it has voluntarily chosen to accept the terms and conditions set forth herein in return for the payment recited above.

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out the Prime Contract and its work on the Project have been fully paid or satisfied or will be fully paid or satisfied within seven (7) days of the undersigned's receipt of the payment referenced in this Final Waiver and Release including, but not limited to, the following:

- Employees, laborers, material men, and subcontractors employed by the undersigned;
- Labor, materials, equipment and supplies furnished by others to the undersigned;
- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

With respect to the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Owner from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied or does not fully pay or satisfy its obligations under the Prime Contract and on the Project as represented and warranted in this Final Waiver and Release.

Initial: _____/Date: _____

The undersigned further agrees that making and receipt of payment and execution of this Final Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to Owner. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Final Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Final Waiver and Release and to continue in effect the obligations assumed with respect to the Subcontract.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument this the ____ day of _____, 20__.

FOR GENERAL CONTRACTOR:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Initial: _____/Date: _____

UNCONDITIONAL FULL AND FINAL LIEN WAIVER AND RELEASE TO OWNER

The undersigned acknowledges receipt of \$ _____ paid by _____
(the "Owner"), which amount is detailed by Payment Request No. _____ dated _____, on
account of labor, materials, equipment and services furnished for the improvement of the following project:

(the "Project")

The undersigned warrants that it has the right to execute this Unconditional Full and Final Lien Waiver and Release to Owner ("Final Waiver & Release"). The undersigned does hereby fully release and waive any and all lien rights it has on the Project and acknowledges receipt of full and final payment on the Project and, in consideration of such payment, hereby waives and releases any and all rights to claim, both now and in the future, a mechanic's lien against the Project.

The undersigned hereby certifies and represents that it has paid in full all debts, obligations and liabilities for labor, materials, skills, equipment, tools, supplies, services or associated items furnished for the undersigned's use and all local, State and Federal taxes and charges in connection with the Project.

SIGNED this _____ day of _____, 20____.

COMPANY NAME

Name

Its: _____
(Title)

SWORN TO AND SUBSCRIBED before me

this the _____ day of _____, 20____.

Notary Public for _____

My Commission Expires: _____

CONDITIONAL PARTIAL WAIVER AND RELEASE BY SUBCONTRACTOR

The undersigned, for and in consideration of payment in the amount of \$_____, which amount is detailed by Payment Request No. _____ dated _____ or Invoice(s) No. _____ dated _____ and is the full and final amount owed the undersigned through the period to date of _____ (“Period To Date”), and for other good and valuable consideration the sufficiency of which is hereby acknowledged, does hereby waive, release and relinquish any and all rights, claims, demands, liens, bond claims, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of or related to the performance of work or the furnishing of labor or materials by the undersigned through the Period to Date pursuant to a subcontract or purchase order (the “Subcontract”) with _____ (“Contractor”) in connection with the following project:

(the “Project”)

Use of the term “Contractor,” hereinafter, shall be deemed to mean and refer to the Contractor, Company and its agents, representatives, employees, directors, and all those acting on their behalf.

Except as specifically described below, and excepting the undersigned’s retainage, if any, this Conditional Partial Waiver and Release by Subcontractor (“Partial Waiver & Release”) applies to all claims for additional compensation or time extensions arising from or relating to any and all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred or may be claimed through the Period to Date, excepting only valid claims currently unresolved and expressly set forth below:

Except as provided above, the undersigned expressly waives any and all claims, liens, bond claims, demands and causes of action against Contractor, the Project’s owner (“Owner”), the real property upon which the Project is located, any funds owing from Owner to Contractor in relation to the Project, and, if applicable, Contractor’s performance and payment bond surety (“Surety”) through the Period To Date.

This Partial Waiver and Release is intended to apply to and protect Surety, if any, as well as anyone claiming by or through Contractor, Owner, or Surety in connection with any claim, demand, lien, bond claim, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Partial Waiver and Release.

This Partial Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Partial Waiver and Release, that it is fully informed with respect to the legal effect of this Partial Waiver and Release and that it has voluntarily chosen to accept the terms and conditions set forth herein in return for the payment recited above.

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out of its work on the Project through the Period To Date have been fully paid or satisfied or will be fully paid or satisfied within seven (7) days of the undersigned’s receipt of the payment referenced in this Partial Waiver and Release including, but not limited to, the following:

- Employees, laborers, material men, and subcontractors employed by the undersigned;

Initial: _____/Date: _____

- Labor, materials, equipment and supplies furnished by others to the undersigned;
- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

With respect to the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Contractor, Surety, if any, Owner, and any others claiming by or through them, from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied or does not fully pay or satisfy its obligations on the Project as represented and warranted in this Partial Waiver and Release.

The undersigned further agrees that making and receipt of payment and execution of this Partial Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to Contractor. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the Surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Partial Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Partial Waiver and Release and to continue in effect the obligations assumed with respect to the Subcontract.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument this the _____ day of _____, 20_____.

FOR SUBCONTRACTOR:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this _____ day of _____, 20_____.

Notary Public
My Commission Expires: _____

Initial: _____/Date: _____

UNCONDITIONAL PARTIAL WAIVER AND RELEASE BY SUBCONTRACTOR

The undersigned acknowledges receipt of payment in the amount of \$ _____, which is the full and final amount due the undersigned as detailed by Payment Request No. _____ dated _____ or Invoice(s) No. _____ dated _____ through the period to date of _____ (“Period To Date”), and for other good and valuable consideration the sufficiency of which is hereby acknowledged, does hereby waive, release and relinquish any and all rights, claims, demands, liens, bond claims, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of or related to the performance of work or the furnishing of labor or materials by the undersigned through the Period to Date pursuant to a subcontract or purchase order (the “Subcontract”) with _____ (“Contractor”) in connection with the following project:

(the “Project”)

Use of the term “Contractor,” hereinafter, shall be deemed to mean and refer to the Contractor, Company and its agents, representatives, employees, directors, and all those acting on their behalf.

Except as specifically described below, and excepting retainage, if any, held under the Subcontract, this Unconditional Partial Waiver and Release by Subcontractor/Supplier (“Partial Waiver and Release”) applies to all claims for additional compensation or time extensions arising from or relating to any and all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred or may be claimed through the Period to Date, excepting only any claims currently unresolved for which written notice has been provided to Contractor as follows:

Except as provided above, the undersigned expressly waives any and all claims, liens, bond claims, demands and causes of action against Contractor, the Project’s owner (“Owner”), the real property upon which the Project is located, any funds owing from Owner to Contractor in relation to the Project, and, if applicable, Contractor’s performance and payment bond surety (“Surety”) through the Period To Date.

This Partial Waiver and Release is intended to apply to and protect Surety, if any, as well as anyone claiming by or through Contractor, Owner, or Surety in connection with any claim, demand, lien, bond claim, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Waiver and Release.

This Partial Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Partial Waiver and Release, that it is fully informed with respect to the legal effect of this Partial Waiver and Release and that it has voluntarily chosen to accept the terms and conditions set forth herein.

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out of its work on the Project through the Period To Date have been fully paid or satisfied including, but not limited to, the following:

Initial: _____/Date: _____

- Employees, laborers, material men, and subcontractors employed by the undersigned;
- Labor, materials, equipment and supplies furnished by others to the undersigned;
- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

With respect the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Contractor, Surety, if any, Owner, and any others claiming by or through them, from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied its obligations on the Project as represented and warranted in this Partial Waiver and Release.

The undersigned further agrees that making and receipt of payment and execution of this Partial Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to Contractor. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the Surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Partial Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Partial Waiver and Release and to continue in effect the obligations assumed with respect to the Subcontract.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument this the _____ day of _____, 20_____.

FOR SUBCONTRACTOR/SUPPLIER:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this _____ day of _____, 20__.

Notary Public My Commission Expires: _____

Initial: _____/Date: _____

UNCONDITIONAL FULL AND FINAL WAIVER AND RELEASE BY SUBCONTRACTOR

The undersigned acknowledges receipt of payment in the amount of \$_____, which is the full and final amount due the undersigned as detailed by Payment Request No. _____ dated _____ or Invoice(s) No. _____ dated _____. In consideration of such payment and for other good and valuable consideration the sufficiency of which is hereby acknowledged, the undersigned does hereby waive, release and relinquish any and all rights, claims, demands, liens, bond claims, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of or related to the performance of work or the furnishing of labor or materials by the undersigned pursuant to a subcontract or purchase order (the "Subcontract") with _____ ("Contractor") in connection with the following project:

(the "Project")

Use of the term "Contractor," hereinafter, shall be deemed to mean and refer to the Contractor, Company and its agents, representatives, employees, directors, and all those acting on their behalf.

This Unconditional Full and Final Waiver and Release by Subcontractor/Supplier ("Final Waiver & Release") applies to all claims for additional compensation or time extensions arising from or related to any and all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred in connection with the Project. The undersigned expressly waives any and all claims, liens, bond claims, demands and causes of action against Contractor, the Project's owner ("Owner"), the real property upon which the Project is located, any funds owing from Owner to Contractor in relation to the Project, and, if applicable, Contractor's performance and payment bond surety ("Surety").

This Final Waiver and Release is intended to apply to and protect Surety, if any, as well as anyone claiming by or through Contractor, Owner, or Surety in connection with any claim, demand, lien, bond claim, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Final Waiver and Release.

This Final Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Final Waiver and Release, that it is fully informed with respect to the legal effect of this Final Waiver and Release and that it has voluntarily chosen to accept the terms and conditions set forth herein.

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out of its work on the Project have been fully paid or satisfied including, but not limited to, the following:

- Employees, laborers, material men, and subcontractors employed by the undersigned;
- Labor, materials, equipment and supplies furnished by others to the undersigned;
- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

With respect to the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Contractor, Surety, if any, Owner, and any others claiming by or through them, from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable

Initial: _____/Date: _____

attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied its obligations on the Project as represented and warranted in this Final Waiver and Release.

The undersigned further agrees that making and receipt of payment and execution of this Final Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to Contractor. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the Surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Final Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Final Waiver and Release and to continue in effect the obligations assumed with respect to the Subcontract.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument this the ____ day of _____, 20__.

FOR SUBCONTRACTOR/SUPPLIER:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Initial: _____/Date: _____

CONDITIONAL FINAL WAIVER AND RELEASE BY SUBCONTRACTOR

The undersigned, for and in consideration of payment in the amount of \$_____, which is the full and final amount due the undersigned as detailed by Payment Request or Invoice No. _____ dated _____, and for other good and valuable consideration the sufficiency of which is hereby acknowledged, does hereby waive, release and relinquish any and all rights, claims, demands, liens, bond claims, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of or related to the performance of work or the furnishing of labor or materials by the undersigned pursuant to a subcontract or purchase order (the "Subcontract") with _____ ("Contractor") in connection with the following project:

(the "Project")

Use of the term "Contractor," hereinafter, shall be deemed to mean and refer to the Contractor, Company and its agents, representatives, employees, directors, and all those acting on their behalf.

This Conditional Final Waiver and Release by Subcontractor ("Final Waiver & Release) applies to all claims for additional compensation or time extensions arising from or related to any and all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to the date of this document. The undersigned expressly waives any and all claims, liens, bond claims, demands and causes of action against Contractor, the Project's owner ("Owner"), the real property upon which the Project is located, any funds owing from Owner to Contractor in relation to the Project, and, if applicable, Contractor's performance and payment bond surety ("Surety").

This Final Waiver and Release is intended to apply to and protect Surety, if any, as well as anyone claiming by or through Contractor, Owner, or Surety in connection with any claim, demand, lien, bond claim, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Final Waiver and Release.

This Final Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Final Waiver and Release, that it is fully informed with respect to the legal effect of this Final Waiver and Release and that it has voluntarily chosen to accept the terms and conditions set forth herein in return for the payment recited above.

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out of its work on the Project have been fully paid or satisfied or will be fully paid or satisfied within seven (7) days of the undersigned's receipt of the payment referenced in this Final Waiver and Release including, but not limited to, the following:

- Employees, laborers, material men, and subcontractors employed by the undersigned;
- Labor, materials, equipment and supplies furnished by others to the undersigned;
- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

With respect to the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Contractor, Surety, if any, Owner, and any others claiming by or through them,

Initial: _____/Date: _____

from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied or does not fully pay or satisfy its obligations on the Project as represented and warranted in this Final Waiver and Release.

The undersigned further agrees that making and receipt of payment and execution of this Final Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to Contractor. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Final Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Final Waiver and Release and to continue in effect the obligations assumed with respect to the Subcontract.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument this the ____ day of _____, 20 ____.

FOR SUBCONTRACTOR:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this ____ day of _____, 20 ____.

Notary Public

My Commission Expires: _____

Initial: _____/Date: _____

CONDITIONAL PARTIAL WAIVER AND RELEASE BY LOWER-TIER SUBCONTRACTOR/SUPPLIER

The undersigned, for and in consideration of payment in the amount of \$ _____, which amount is detailed by Payment Request No. _____ dated _____ or Invoice(s) No. _____ dated _____ and is the full and final amount owed the undersigned through the period to date of _____ (“Period To Date”), and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, does hereby waive, release and relinquish any and all rights, claims, demands, liens, bond claims, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of or related to the performance of work or the furnishing of labor or materials by the undersigned through the Period to Date in connection with the following project:

(the “Project”)

The undersigned acknowledges that _____ (“Contractor”) can rely on the representations and warranties made herein.

Use of the term “Contractor,” hereinafter, shall be deemed to mean and refer to the Contractor, Company and its agents, representatives, employees, directors, and all those acting on their behalf.

Except as specifically described below, and excepting the undersigned’s retainage, if any, this Conditional Partial Waiver & Release by Lower-Tier Subcontractor/Supplier (“Partial Waiver & Release”) applies to all claims for additional compensation or time extensions arising from or relating to any and all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred or may be claimed through the Period to Date, excepting only valid claims currently unresolved and expressly set-forth below:

Except as provided above, the undersigned expressly waives any and all claims, liens, bond claims, demands and causes of action against Contractor, the Project’s owner (“Owner”), the real property upon which the Project is located, any funds owing from Owner to Contractor in relation to the Project, any funds owing from Contractor to any subcontractor or supplier in relation to the Project and, if applicable, Contractor’s performance and payment bond surety (“Surety”) through the Period To Date.

This Partial Waiver and Release is intended to apply to and protect Surety, if any, as well as anyone claiming by or through Contractor, Owner, or Surety in connection with any claim, demand, lien, bond claim, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Partial Waiver and Release.

This Partial Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Partial Waiver and Release, that it is fully informed with respect to the legal effect of this Partial Waiver and Release and that it has voluntarily chosen to accept the terms and conditions set forth herein in return for the payment recited above.

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out of its work on the Project through the Period To Date have been fully paid or satisfied or will be fully paid or satisfied within seven (7) days of the undersigned’s receipt of the payment referenced in this Partial Waiver and Release including, but not limited to, the following:

- Employees, laborers, material men, and subcontractors employed by Subcontractor/Supplier;
- Labor, materials, equipment and supplies furnished by others to Subcontractor/Supplier;

Initial: _____/Date: _____

- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

With respect to the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Contractor, Surety, if any, Owner, and any others claiming by or through them, from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied or does not fully pay or satisfy its obligations on the Project as represented and warranted in this Partial Waiver and Release.

The undersigned further agrees that making and receipt of payment and execution of this Partial Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to Contractor. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the Surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Partial Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Partial Waiver and Release and to continue in effect the obligations assumed with respect to the Subcontract.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument this the _____ day of _____, 20_____ .

FOR SUBCONTRACTOR/SUPPLIER:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this _____ day of _____, 20_____.

Notary Public
My Commission Expires: _____

UNCONDITIONAL PARTIAL WAIVER AND RELEASE BY LOWER-TIER
SUBCONTRACTOR/SUPPLIER

The undersigned acknowledges receipt of payment in the amount of \$ _____, which is the full and final amount due the undersigned as detailed by Payment Request or Invoice No. _____ dated _____ through the period to date of _____ ("Period To Date"). In consideration of such payment and for other good and valuable consideration the sufficiency of which is hereby acknowledged, the undersigned does hereby waive, release and relinquish any and all rights, claims, demands, liens, bond claims, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of or related to the performance of work or the furnishing of labor or materials through the Period to Date in connection with the following project:

(the "Project")

The undersigned acknowledges that _____ ("Contractor") and _____ ("Owner") can rely on the representations and warranties made herein.

Use of the term "Contractor," hereinafter, shall be deemed to mean and refer to the Contractor, Company and its agents, representatives, employees, directors, and all those acting on their behalf.

Except as specifically described below, and excepting the undersigned's retainage, if any, this Unconditional Partial Waiver and Release by Lower-Tier Subcontractor/Supplier ("Partial Waiver and Release") applies to all claims for additional compensation or time extensions arising from or relating to any and all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred or may be claimed through the Period to Date, excepting only valid claims currently unresolved and expressly set-forth below:

Except as provided above, the undersigned expressly waives any and all claims, liens, bond claims, demands and causes of action against Contractor, the Project's owner ("Owner"), the real property upon which the Project is located, any funds owing from Owner to Contractor in relation to the Project, any funds owing from Contractor to any subcontractor or supplier in relation to the Project and, if applicable, Contractor's performance and payment bond surety ("Surety") through the Period To Date.

This Partial Waiver and Release is intended to apply to and protect Surety, if any, as well as anyone claiming by or through Contractor, Owner, or Surety in connection with any claim, demand, lien, bond claim, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Partial Waiver and Release.

This Partial Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Partial Waiver and Release, that it is fully informed with respect to the legal effect of this Partial Waiver and Release and that it has voluntarily chosen to accept the terms and conditions set forth herein in return for the payment recited above.

Initial: _____/Date: _____

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out of its work on the Project through the Period To Date have been fully paid or satisfied including, but not limited to, the following:

- Employees, laborers, material men, and subcontractors employed by the undersigned;
- Labor, materials, equipment and supplies furnished by others to the undersigned;
- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

With respect to the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Contractor, Surety, if any, Owner, and any others claiming by or through them, from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied its obligations on the Project as represented and warranted in this Partial Waiver and Release.

The undersigned further agrees that making and receipt of payment and execution of this Partial Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to Contractor. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the Surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Partial Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Partial Waiver and Release and to continue in effect the obligations assumed with respect to the Subcontract.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

IN WITNESS WHEREOF, on behalf of Subcontractor/Supplier, with full authority, I have executed this instrument this the _____ day of _____, 20_____.

FOR SUBCONTRACTOR/SUPPLIER:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this _____ day of _____, 20_____.

Notary Public

My Commission Expires: _____

CONDITIONAL FINAL WAIVER AND RELEASE
BY LOWER-TIER SUBCONTRACTOR/SUPPLIER

The undersigned, for and in consideration of payment in the amount of \$_____, which is the full and final amount due the undersigned as detailed by Payment Request or Invoice No. _____ dated _____, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, does hereby waive, release and relinquish any and all rights, claims, demands, liens, bond claims, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of or related to the performance of work or the furnishing of labor or materials in connection with the following project:

(the "Project")

The undersigned acknowledges that _____ ("Contractor") and _____ ("Owner") can rely on the representations and warranties made herein.

Use of the term "Contractor," hereinafter, shall be deemed to mean and refer to the Contractor, Company and its agents, representatives, employees, directors, and all those acting on their behalf.

This Conditional Final Waiver and Release by Lower-Tier Subcontractor/Supplier ("Final Waiver & Release") applies to all claims for additional compensation or time extensions arising from or related to any and all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to the date of this document. The undersigned expressly waives any and all claims, liens, bond claims, demands and causes of action against Contractor, the Project's owner ("Owner"), the real property upon which the Project is located, any funds owing from Owner to Contractor in relation to the Project, any funds owing Contractor to any subcontractor or suppliers in relation to the Project and, if applicable, Contractor's performance and payment bond surety ("Surety").

This Final Waiver and Release is intended to apply to and protect Surety, if any, as well as anyone claiming by or through Contractor, Owner, or Surety in connection with any claim, demand, lien, bond claim, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Final Waiver and Release.

This Final Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Final Waiver and Release, that it is fully informed with respect to the legal effect of this Final Waiver and Release and that it has voluntarily chosen to accept the terms and conditions set forth herein in return for the payment recited above.

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out of its work on the Project have been fully paid or satisfied or will be fully paid or satisfied within seven (7) days of the undersigned's receipt of the payment referenced in this Final Waiver and Release including, but not limited to, the following:

- Employees, laborers, material men, and subcontractors employed by the undersigned;
- Labor, materials, equipment and supplies furnished by others to the undersigned;
- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

Initial: _____/Date: _____

With respect to the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Contractor, Surety, if any, Owner, and any others claiming by or through them, from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied or does not fully pay or satisfy its obligations on the Project as represented and warranted in this Final Waiver and Release.

The undersigned further agrees that making and receipt of payment and execution of this Final Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to Contractor. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the Surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Final Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Final Waiver and Release and to continue in effect the obligations assumed with respect to the Subcontract.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument this the _____ day of _____, 20____.

FOR SUBCONTRACTOR/SUPPLIER:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this _____ day of _____, 20____.

Notary Public
My Commission Expires: _____

Initial: _____/Date: _____

UNCONDITIONAL FULL AND FINAL WAIVER AND RELEASE
BY LOWER-TIER SUBCONTRACTOR/SUPPLIER

The undersigned acknowledges receipt of payment in the amount of \$ _____, which is the full and final amount due the undersigned as detailed by Payment Request _____ or Invoice No. _____ dated _____. In consideration of such payment and for other good and valuable consideration the sufficiency of which is hereby acknowledged, the undersigned does hereby waive, release and relinquish any and all rights, claims, demands, liens, bond claims, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of or related to the performance of work or the furnishing of labor or materials in connection with the following project:

(the "Project")

The undersigned acknowledges that _____ ("Contractor") can rely on the representations and warranties made herein.

Use of the term "Contractor," hereinafter, shall be deemed to mean and refer to the Contractor, Company and its agents, representatives, employees, directors, and all those acting on their behalf.

This Unconditional Full and Final Waiver and Release by Lower-Tier Subcontractor/Supplier ("Final Waiver & Release") applies to all claims for additional compensation or time extensions arising from or related to any and all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred in connection with the Project. The undersigned expressly waives any and all claims, liens, bond claims, demands and causes of action against Contractor, the Project's owner ("Owner"), the real property upon which the Project is located, any funds owing from Owner to Contractor in relation to the Project, any funds owing Contractor to any subcontractor or suppliers in relation to the Project and, if applicable, Contractor's performance and payment bond surety ("Surety").

This Final Waiver and Release is intended to apply to and protect Surety, if any, as well as anyone claiming by or through Contractor, Owner, or Surety in connection with any claim, demand, lien, bond claim, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Final Waiver and Release.

This Final Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants, and represents that it has fully reviewed the terms and conditions of this Final Waiver and Release, that it is fully informed with respect to the legal effect of this Final Waiver and Release and that it has voluntarily chosen to accept the terms and conditions set forth herein.

The undersigned further represents that all of its obligations — legal, equitable or otherwise — related to or arising out of its work on the Project have been fully paid or satisfied including, but not limited to, the following:

- Employees, laborers, material men, and subcontractors employed by the undersigned;
- Labor, materials, equipment and supplies furnished by others to the undersigned;
- Sales and use taxes, withheld and payable payroll taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

Initial: _____/Date: _____

With respect to the representations and warranties herein, the undersigned does hereby agree to indemnify and hold harmless Contractor, Surety, if any, Owner, and any others claiming by or through them, from any and all claims, damages, losses, expenses, and fees, including, but not limited to, reasonable attorneys' fees, incurred by reason of any claim that the undersigned has not fully paid or satisfied its obligations on the Project as represented and warranted in this Final Waiver and Release.

The undersigned further agrees that making and receipt of payment and execution of this Final Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to Contractor. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the Surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Final Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Final Waiver and Release and to continue in effect the obligations assumed with respect to the Subcontract.

NOTICE AND WARNING: Any contractor, subcontractor, or person receiving payment for an improvement to real property who knowingly furnishes a false written statement of sums due or claimed to be due for labor, material or work is guilty of a misdemeanor under N.C.G.S. §44A-24 and upon conviction shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed two (2) years, or by both, and such fine and imprisonment is at the discretion of the Court. The elements of the criminal offense under N.C.G.S. §44A-24 are the furnishing of a false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment in exchange therefore, and in any prosecution under N.C.G.S. §44A-24 it shall not be necessary for the State of North Carolina to prove that the obligor or payor relied upon the false statement or that any person was injured thereby.

Criminal sanctions for furnishing a false statement in connection with the improvement of real property are in addition to and not in lieu of civil liability for fraud, misrepresentation, and unfair and deceptive trade practices which carry with them penalties of punitive damages and/or triple damages.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument this the _____ day of _____, 20____.

FOR SUBCONTRACTOR/SUPPLIER:

Company Name: _____ Witness: _____

By: _____
(Owner, Partner, or Corp. President, Vice Presidents Only)

STATE OF _____ COUNTY OF _____

SWORN TO and SUBSCRIBED before me this _____ day of _____, 20____.

Notary Public
My Commission Expires: _____

Initial: _____/Date: _____