



**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION –  
CONSTRUCTION MANAGER AT RISK VERSION**

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## GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION – CONSTRUCTION MANAGER AT RISK VERSION

### ARTICLE 1.

### DEFINITIONS

- 1.1 Agreement - The Construction Agreement, these General Conditions, and any Supplementary Conditions.
- 1.2 AIA - The American Institute of Architects.
- 1.3 ASTM - The American Society for Testing and Materials.
- 1.4 Beneficial Occupancy – The point at which the Project can be occupied by the Owner for its intended purpose, upon achievement of Substantial Completion, as defined in paragraph 1.39 of these General Conditions.
- 1.5 Change Order - A written order to the Contractor signed by the CM, the Owner and the Designer authorizing an addition, deletion, or revision in the Work and/or an adjustment in the Contract Price and/or the Contract Time issued after execution of the Construction Agreement. See paragraph 14.1 of these General Conditions.
- 1.6 Completion Dates - Those dates identified as the Contractor's Completion Dates in the Contractor's Construction Schedule, the Master Schedule, or elsewhere in the Contract Documents.
- 1.7 Construction Agreement – The document executed by the Contractor and the CM to formally memorialize their consent to the terms of the Agreement.
- 1.8 Construction Change Directive – A written order to the Contractor signed by the CM, the Owner and the Designer directing an addition, deletion, or revision in the Work after execution of the Construction Agreement, in circumstances when the parties have been unable to agree on an adjustment to the Contract Price or the Contract Time, but the CM directs that the Contractor proceed with said Work subject to adjustment of the Contract Price and/or Contract Time under the procedures described herein.
- 1.9 Construction Manager - The person or firm designated as the Construction Manager or the CM in the Contract Documents, or its authorized representatives. The agreement between the CM and the Owner is referred to herein as the CM Contract or the Construction Management Contract.
- 1.10 Contractor's Construction Schedule - That schedule described in Article 13 hereof and identified as the Contractor's Construction Schedule.
- 1.11 Contract Documents - All of the documents that make up the Agreement, plus the Drawings and Specifications that describe the scope of the Work, plus allowable Modifications to the Contract Documents.
- 1.12 Contract Price - The total monies payable to the Contractor under the Contract Documents pursuant to paragraph 15.1 of the Agreement.



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- 1.13 Contract Time - The number of calendar days stated in, or computed from, the Contract Documents for the completion of the Work, or any portion thereof. See, particularly, Article 13 hereof. Time of completion as specified therein is of the essence. The time used and referred to on the Project will be that time which is observed in Raleigh, North Carolina, being Eastern Daylight Savings Time (EDT), Eastern Standard Time (EST), or other as designated by the Designer.
- 1.14 Contractor - The Contractor shall be that party identified as such in the Agreement.
- 1.15 Days - Unless otherwise indicated, the term "days" shall mean consecutive calendar days.
- 1.16 Daylight Hours - The hours or portions of hours between sunrise and sunset local time.
- 1.17 Designer(s) – The person or firm designated as the Designer in the Contract Documents, or their authorized representatives. The Designer, as referred to herein, shall mean architect, landscape architect, and/or engineer. They will be referred to hereinafter as if each were of the singular number, masculine gender.
- 1.18 Drawings - The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, and generally including plans, elevations, sections, details, schedules and diagrams. A list of the Drawings is contained in the Supplemental General Conditions.
- 1.19 Field Order - A written order issued by the Designer which clarifies or interprets the Contract Documents or orders minor changes in the Work in accordance with the Contract Documents. See paragraph 14.3 of these General Conditions.
- 1.20 Final Completion - The point at which the Contractor has, as determined by the Designer, completed the Work, with the exception of guaranty and warranty obligations, and becomes entitled, upon the recommendation of the CM and the Designer and determination by the Owner, to final payment.
- 1.21 The words "furnish," "furnish and install," "install," and "provide" or words with similar meanings shall be interpreted, unless otherwise stated, to mean furnish and install complete, in place and ready for service.
- 1.22 Master Schedule - The CM shall prepare and maintain a Master Schedule for the Project. The Master Schedule shall specify the proposed start and finish dates for each major project activity including all design and construction activities. The Master Schedule shall be included in the bid documents presented to bidders. The Master Schedule shall be revised and updated to include key activities from the approved Contractor's Construction Schedule, as described in the Contract Documents, including proposed start and finish dates.
- 1.23 Modification - (A) a written amendment to the Contract Documents signed by the CM and the Contractor and identified therein as such, (B) a Change Order, (C) Construction Change Directive, or (D) a Field Order. A Modification may only be issued after execution of the Agreement.



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- 1.24 Notice - The term "notice" or "written notice" as used herein shall mean and include all written notices, demands, instructions, and claims approvals and disapprovals furnished by the CM, the Owner or the Designer to obtain compliance with the requirements of the Contract Documents, as well as all written notices, demands, instructions and claims furnished by the Contractor as required by the Contract Documents. Where notice is required under the terms of the Contract Documents, written notice shall always be required, and oral or "constructive" notice shall be insufficient and ineffective as notice. Email or other electronic delivery shall be insufficient and ineffective as notice unless specifically allowed by the Supplementary Conditions or a Modification to the Agreement. Written notice shall be deemed to have been duly served on the date that it is delivered in person to the individual or to a member of the firm, to an officer of the corporation for whom it is intended, to an authorized representative of such individual, firm, or corporation, or on the date that it is mailed by registered or certified mail, return receipt requested, addressed to the last business address of such individual, firm, or corporation known to the person giving the notice. Written notice may also be given by facsimile transmission, provided that proof of delivery is obtained. In the case of delivery in person, such delivery shall not be effective unless and until a written and signed receipt showing the date and time of delivery is obtained.
- 1.25 Notice of Award - The written notice by the CM to the Contractor that the Contractor is the successful Bidder and that upon compliance with the conditions precedent to be fulfilled by the Contractor within the time specified, the CM will execute and deliver the Agreement to the Contractor.
- 1.26 Notice to Proceed - See paragraph 13.3 of these General Conditions.
- 1.27 Owner - The Owner is the person designated as such in the Agreement.
- 1.28 Owner's Authorized Representative - A person, or persons, employed by the Owner and designated from time to time by written notice to the Contractor to administer the Contract Documents, and to observe and monitor the Work on behalf of the Owner with authority and responsibility as herein specified.
- 1.29 Project - The total construction of which the Work performed under the Contract Documents may be the whole or a part.
- 1.30 Project Manager - That person designated by the Contractor in accordance with paragraph 7.2 who shall be in general charge of the Work and its performance and who shall have the authority set forth in the last sentence of paragraph 7.2.
- 1.31 Request For Information (RFI) - A written communication from the Contractor to the CM to be forwarded to the Designer for any interpretation of, or information needed, required, or desired under the Contract Documents. The CM reserves the right to determine the reasonable format and contents required for a RFI. In any RFI, the Contractor shall state a reasonable date by which a response is necessary in order to avoid delay in progress of the Work and shall make such request sufficiently in advance of such date as to avoid any such delay. The CM shall obtain a response in writing to the RFI by the date stated by the



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Contractor unless the CM cannot reasonably do so, in which case the CM shall prior to that date notify the Contractor of the date by which the CM can reasonably respond. The Contractor shall not be entitled to any additional time for the completion of the Work or any portion thereof by reason of the failure to timely respond to an RFI if the Contractor has not submitted the RFI sufficiently in advance to allow the CM and the Designer a reasonable time within which to respond.

- 1.32 Request for Payment - The form, in the form of AIA Document G702 (latest edition.) or other published document approved by the CM, which is to be used by the Contractor in requesting progress payments and which is to include a Schedule of Values as required by the Contract Documents and an affidavit of the Contractor that progress payments theretofore received from the CM on account of the Work have been applied by the Contractor to discharge in full all the Contractor's obligations incurred in connection with Work covered by all prior applications for payment. See paragraph 20.2 of these General Conditions.
- 1.33 Resident Superintendent - That person designated by the Contractor in accordance with paragraph 7.2 who has day-to-day responsibility for the prosecution of the Work and the obtaining of proper materials and equipment, and adequate labor and who shall have the authority set forth in the last sentence of paragraph 7.2.
- 1.34 Schedule of Values - Any breakdown of the Contract Price which may be required by the Contract Documents, and designated as such. See paragraph 20.1 of these General Conditions.
- 1.35 Specifications - That portion of the Contract Documents consisting generally of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services.
- 1.36 Subcontractor - A person, firm, or corporation who has entered into a direct contract with the Contractor to perform any of the Work at the Project.
- 1.37 Submittal - Shop drawings, product data, samples, and other documents required by the Contract Documents to be submitted by the Contractor to the CM and the Designer.
- 1.38 Submittal Register - See paragraph 13.2 of these General Conditions.
- 1.39 Substantial Completion - The point at which the Work, and Work by other Contractors on or in connection with the Project, as determined by the Designer, is sufficiently complete in accordance with the Contract Documents that it can be beneficially occupied by the Owner, and the Work can be utilized by the Owner for its intended use, and all necessary permits and permissions for Beneficial Occupancy and utilization having been obtained by the Contractor. All operations and maintenance manuals, Owner training, and as-built drawings must be submitted prior to Substantial Completion being achieved.
- 1.40 Sub-subcontractor - A person or entity that has a direct or indirect contract with a Subcontractor to perform any of the Work at the Project.



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- 1.41 Work - The construction and services required by the Contract Documents, including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.
  - 1.42 All references in the Contract Documents to the masculine shall be interpreted as including the feminine or neuter and all references in the Contract Documents to the singular or the plural shall be interpreted as including the other, as may be appropriate in the reasonable interpretation of the Contract Documents.

### **ARTICLE 2. CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS**

- 2.1 It is the intent of the Specifications and Drawings and other Contract Documents to describe a complete Project in accordance with the Contract Documents.
- 2.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall notify the CM in writing before proceeding with the Work affected thereby. In resolving such conflicts, errors and discrepancies, the Contract Documents shall be given preference in the following order: Construction Agreement, Modifications, Addenda, Supplemental Conditions, General Conditions, Specifications, and Drawings. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which, so applied, have a well known technical trade meaning shall be deemed to refer to such meaning and to incorporate any recognized standards which are a part of such meaning.
- 2.3 Miscellaneous items, accessories and work which are not specifically mentioned, but which are essential to produce a complete and properly operating installation, or useable structure or plant providing the indicated function shall be furnished and installed without change in the Contract Price. Such miscellaneous items and accessories shall be of the same quality standards, including material, style, finish, strength, class, weight and other applicable characteristics, as specified for the major component of which the miscellaneous item or accessory is an essential part, and shall be approved by the Designer before installation. This requirement is not intended to include major components not covered by or inferable from the Contract Documents.
- 2.4 The Work of all trades under the Contract Documents shall be coordinated by the Contractor in such a manner as to obtain the best workmanship possible for the Work and all components of the Work shall be installed or erected in accordance with the best practices of the particular trade.
- 2.5 The Contractor shall fully complete the Work and shall be responsible for all of the Work under the Contract Documents to which the Construction Agreement applies. If the Contractor is prevented from doing so by any limitation of the Contract Documents, the Contractor shall immediately give notice thereof to the CM in writing before proceeding with the construction in the area where the problem or limitation exists.



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- 2.6 Standard specifications or manufacturers' literature, when referenced, shall be of the latest revision or printing unless otherwise stated and is intended to establish the minimum requirements acceptable.
- 2.7 For those materials specified without the use of brand names, the Contractor shall submit to the CM within thirty (30) days after its receiving the Construction Agreement for signatures, any product that meets the express requirements of the Specifications, unless a longer time is agreed to in the Master Schedule.
- Such Submittal shall include manufacturer's data, test reports, performance data and certifications, samples, erection details, and other applicable information as required to permit determination by the Designer whether such proposed products are suitable. The Designer shall be the sole judge as to the suitability of any proposed product. The burden of proof of quality rests with the Contractor.
- 2.8 The Contractor is required to examine and read the complete set of Drawings and Specifications for the Project for information concerning the Work, because some of the Work for which the Contractor will be responsible may be indicated on or in documentation applying primarily to the Work of one or more other separate prime contractors. No allowance will be made for the Contractor's failure to become familiar with the complete set of Project Drawings and Specifications.
- 2.9 Contractor's requests for clarification or information shall clearly define the cause(s) of the Contractor's request and, as appropriate, shall include the Contractor's interpretation and the Contractor's proposed solution.

### **ARTICLE 3. FAMILIARITY WITH WORK, CONDITIONS AND LAWS**

- 3.1 The Contractor has investigated prior to bidding and is satisfied with all conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electrical power, roads and uncertainties of weather, or similar physical conditions at the Project site, and the character of equipment and facilities needed prior to and during prosecution of the Work. The Contractor is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from inspection of the Project site, including all exploratory work done by the Owner, as well as from information presented by the Contract Documents, or any other information made available to the Contractor prior to receipt of bids. Any failure by the Contractor to become acquainted with the available information shall not relieve the Contractor from the responsibility for estimating properly the difficulty or cost of successfully performing the Work.
- 3.2 The Contractor shall be entitled to rely upon all information furnished to the Contractor in writing by the CM with respect to the Project site and to make all inferences from it that would reasonably be made by a contractor having knowledge and experience with similar work; however, the Contractor shall not be entitled to infer from CM-supplied information



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any fact or condition which would not be inferred by a contractor having knowledge and experience with similar work and, if the CM-supplied information is inadequate or insufficient in any respect, the Contractor shall be required to obtain independently such other information as a knowledgeable and experienced contractor would prudently obtain in order to evaluate any such condition.

3.3 The Contractor specifically acknowledges familiarity with all Federal, State, and local laws, ordinances, rules, and regulations which may in any manner affect those engaged or employed in the Work, or the materials or equipment in or about the Work, or in any way affect the conduct of the Work and agrees that the Contractor and the Contractor's employees, Subcontractors, and suppliers will, at all times, comply with same. If the Contractor shall discover any provisions in the Contract Documents which are contrary to or inconsistent with any such law, ordinance, rule, or regulation, the Contractor shall immediately give notice thereof to the CM in writing, identifying any items of Work affected, and the Contractor shall not proceed until the Contractor has received written direction from the CM with respect to these items. If the Contractor performs contrary to or inconsistently with any such law, ordinance, rule, or regulation without giving such notice, the Contractor shall bear all costs which are a consequence of such performance.

3.4 At times selected by the CM after execution by the Contractor of the Construction Agreement, a pre-construction conference shall be scheduled and conducted for the benefit of the Project.

### ARTICLE 4. BONDS

4.1 A performance bond in the full amount of the Contract Price, and subject to changes in the Contract Price, may be required of the Contractor to guarantee the faithful performance of the Work in compliance with the Contract Documents, in such form as may be required by law and approved by the Owner. If required, the bond shall be dated the same date as the Construction Agreement and must be accompanied by a current copy of the power of attorney for the attorney-in-fact executing such bond on behalf of a surety company licensed to do business in the state of North Carolina.

4.2 A payment bond in the full amount of the Contract Price, and subject to changes in the Contract Price, may be required of the Contractor to guarantee the payment of all labor and material costs or claims in connection with compliance with the Contract. If required, the payment bond shall be in such form as may be required by law and approved by the Owner. Said bond shall be dated and executed in the same manner as the performance bond in paragraph 4.1.

### ARTICLE 5. INSURANCE AND INDEMNITY

#### 5.1 PROVIDED INSURANCE

#### CONTRACTOR

The Contractor shall, without limiting its obligations or liabilities, procure, pay for and maintain such insurance as is required by law and as is required by this Agreement to protect the Contractor, the CM, the Owner and the Designer from claims for damages for



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bodily injury, including death, and from claims for property damage which may arise from the Contractor's or its representatives', consultants', Subcontractors', agents', or employees' operations under this Agreement. Such insurance shall be of the kinds and have limits of liability and coverages not less than the minimum limits hereinafter specified or required by law, whichever is greater. The CM makes no representation as to the adequacy or sufficiency of such coverages. The following requirements shall in no way be construed to limit or eliminate the liability of the Contractor, which arises from performance of Work under the Agreement. The Contractor is strictly responsible for any losses, claims, and costs of any kind which exceed the Contractor's limits of liability, or which may be outside the coverage scope of the policies.

The insurance specified shall be provided by an insurer approved by the CM, authorized to do such business in the State of North Carolina, and on terms approved by the CM. Insurance companies utilized shall have a minimum rating of A- and Class VII as evaluated by the most current A.M. Best Rating Guide. If the insurer has a Best Rating less than A- and Class VII, the Contractor must receive specific written approval from the CM prior to proceeding with any Work under the Agreement. All agents and brokers shall hold valid licenses from the State of North Carolina. The Contractor shall furnish to the CM a certificate or certificates of insurance in a form satisfactory to the CM contemporaneously with the executed Construction Agreement. Upon request of the CM, the Contractor shall provide the CM with certified copies of the insurance policies required by this Article, including without limitation declaration pages, conditions, exclusions and endorsements, and confirmation that each policy premium has been paid for the required term of this Agreement. Certificates of insurance shall be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance policies shall provide, as evidenced by Certificates of Insurance, that the insurance shall not be canceled, reduced, restricted, or changed in any way without at least thirty (30) days prior written notice to the CM and the Owner. With regard to expiration, cancellation, reduction, restriction, or any other change, certificates shall state: "Should any of the following described policies be canceled before expiration date or be due to expire within thirty (30) days, the insurer shall mail thirty (30) days prior written notice to named certificate holder." In the event of any such cancellation, non-renewal, reduction, restriction, or change in any insurance, the Contractor is obligated to replace such insurance within seven (7) days without a gap in coverage and file accordingly such notice with the CM and the Owner, and other interested parties. Failing immediate receipt of evidence of such replacement of insurance, the CM reserves the right to procure such insurance as the CM considers desirable and the Contractor shall pay or reimburse the cost of the premium in respect thereof. It is expressly provided, however, that any action or inaction on the part of the CM in this respect shall in no way change or reduce the Contractor's responsibilities and liabilities under this Agreement. Self-funded, policy fronting, or other non-risk transfer insurance mechanisms are not acceptable without prior written approval of the CM. Full disclosure of such a program must be made prior to commencing mobilization to the Project site. Failure to make a full disclosure constitutes a material breach of the Agreement, justifying termination for default.

The Contractor shall name the CM, the Owner, the Designer and their respective consultants as additional insureds under all its insurance contracts (except workers' compensation) with respect to and including without limitation liability arising out of activities performed by or on behalf of the Contractor, products and completed operations



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of the Contractor, and automobiles owned, hired, leased, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

For any claims related to this Project, the Contractor's insurance or self-insurance shall be primary and noncontributory with respect to the CM, Owner or Designer insurance. Any insurance or self-insurance maintained by the CM, the Owner or the Designer shall be excess and noncontributory with respect to the Contractor's insurance.

All policies of insurance except as noted in paragraph 5.2 shall contain a clause waiving rights of subrogation against the CM, the Owner and the Designer, unless the CM approves otherwise in writing.

Limits of coverage are not to be amended by deductible clauses of any nature without the express written consent of the CM. The Contractor shall be solely responsible for any deductible assumptions that may exist in any insurance policies required under this Agreement. In addition, the Contractor shall be responsible and shall not be reimbursed for any losses arising from any risk or exposure not insured as required herein, or not covered as a result of a normal policy exclusion or that falls within the self insured retention, if Contractor self insured.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

The claim provisions in the Contractor's insurance policies must specifically state the insurance company or Contractor's third party administrator, if self insured, has both the right and duty to adjust a claim and provide defense.

The policies shall not contain any provision or definition which would serve to exclude or eliminate from coverage third party claims, including exclusions of claims for bodily or other injury to shareholders, partners, officers, directors, or employees of the insured, the premises owner, real estate manager, or the insured's Subcontractor, or any family relative of such persons.

If the policies contain any warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the Work, it shall be modified so that coverage shall be afforded in all cases except for the Contractor's willful or intentional noncompliance with applicable government regulations.

Any failure by any person to comply with reporting or other provisions of the policy including breach of warranties, shall not affect coverage provided to the CM and the Owner and their respective representatives, officials, and employees.

The insolvency or bankruptcy of the Insured or of the Insured's estate shall not relieve the insurance companies of their obligations under these policies. Any clauses to the contrary are unacceptable and must be stricken.



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Failure to comply with these requirements shall be a material breach of this Agreement justifying termination for default.

5.1.1 Worker's Compensation and Employers' Liability Insurance

The Contractor and its Subcontractors shall procure and maintain Workers' Compensation Insurance in the amount and type required by the State of North Carolina and federal law for all employees employed under the Agreement who may come within the protection of Workers' Compensation Laws and covering all operations under the Agreement whether performed by the Contractor or by its Subcontractors.

The Contractor shall pay such assessments as will protect the Contractor and the CM from claims under the Workers' Compensation Laws, workers' or workmen's compensation disability benefits, and other similar employee benefit acts. The current Experience Modification Factor shall be indicated on the Certificate of Insurance.

Coverage under this section shall be as required by federal and state Workers' Compensation and Occupational Disease Statutes, and shall have minimum limits as follows:

Table with 2 columns: Coverage A: and Statutory, State of North Carolina. Rows include Employers' Liability with sub-rows for Each Accident, Disease - Policy Limit, and Disease - Each Employee, all with a \$1,000,000 limit.

Such insurance shall include Voluntary Compensation coverage, a Waiver of Subrogation in favor of the CM as well as other endorsements that may be required by applicable jurisdictions, i.e. United States Longshoremen and Harbor Workers Act and maritime coverage (Jones Act).

5.1.2 Automobile Liability Insurance

The Contractor shall procure and maintain automobile insurance against liability for bodily injury and property damage as described below, that may arise with respect to the Work being performed under the Agreement, and as will provide protection from claims which may arise out of or result from the Contractor's performance of the Work and the Contractor's other obligations under the Agreement, whether such performance of the Work is by the Contractor, by any representative or Subcontractor, by anyone, both officially and personally, directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.



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This policy of insurance shall carry the following minimum Limit of Liability:

Combined Single Limit \$1,000,000

The policy of insurance shall contain or be endorsed to include the following:

- a) owned, hired, and non-owned automobile liability.
b) If the policy contains a warranty stating that coverage is null and void (or words to that effect) if the transporter does not comply with the most stringent regulations governing the Work, it shall be modified so that coverage shall be afforded in all cases except for the transporter's willful or intentional noncompliance with applicable government regulations.

Any failure by any party to comply with reporting or other provisions of the policy including breach of warranties, shall not affect coverage provided to the CM, the Owner, and their respective representatives, officials, and employees.

No subcontracting of waste hauling shall be permitted without prior, written approval of the CM.

5.1.3 General Liability

This policy must be written on an Occurrence basis, with the following minimum Limits of Liability:

Table with 2 columns: Description of liability limit and Amount. Rows include General Aggregate per project, Products/Completed Operations Aggregate, Bodily Injury and Property Damage csl/each occurrence, Personal Injury and Advertising Injury, and a final aggregate limit of \$2,000,000.00.

The policy of insurance shall contain or be endorsed to include the following:

- a) Blanket Contractual Liability covering Contractor's indemnification obligations under this Agreement, in accordance with ISO policy form CG 00 01. Modifications to the standard provision will not be acceptable if they serve to reduce coverage.



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- b) Premises/Operations Liability.
- c) Explosion, collapse, and underground fault.
- d) Independent Contractors and Independent Subcontractors coverage.
- e) Broad Form Property Damage.
- f) Personal Injury.
- g) Cross Liability/Severability of Interest clause.
- h) Employer's Stop-Gap Liability endorsement, if applicable.
- i) Amendment of the Pollution Exclusion Endorsement to allow coverage for bodily injury or property damage caused by heat, smoke, or fumes from a hostile fire.
- j) Designated General Aggregate Limit Endorsement if required by the Supplementary Conditions.
- k) For contractors with design responsibility, endorsement CG22 80 and DIC for contractors' professional is requested.

Coverage shall remain continuously in effect and without interruption for at least six (6) years from the date of the Notice of Award and shall include coverage for exposures arising from operations that have been completed. The Contractor shall furnish the CM and each other additional insured listed in the Agreement to whom the Certificates have been issued, evidence satisfactory to the CM of continuation of such insurance at the date of Substantial Completion and each year thereafter.

### 5.1.4 Pollution Legal Liability (PLL)

Pollution Legal Liability coverage will be provided if required by the Supplementary Conditions.

### 5.1.5 Professional Liability

Policies for professional liability must be provided by the Contractor or its independent design professional if the Contractor is required to provide any professional design services under the Contract Documents. Alternatively, compliance with paragraph 5.1.3 (k) is acceptable. The limits of coverage required for professional liability shall be included in the Contract Documents, and will be subject to approval by the CM, taking into account among any other reasonable factors the risks insured against, the cost of the insurance, and the professionals providing the insurance.

### 5.1.6 Claims



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The Contractor shall notify the CM within twenty-four (24) hours of any claims or alleged claims received by the Contractor covered by any of the policies of insurance required of Contractor in this Agreement. The Contractor shall provide a written copy of the claim or alleged claim to the CM within three (3) days of the Contractor's receipt of the claim or alleged claim. If a claim is settled to the satisfaction of the claimant, the Contractor shall submit a copy of the claimant's release to the CM.

If a claim or alleged claim is rejected by the Contractor and/or its insurance company, the Contractor shall immediately report this fact to the CM.

Should thirty (30) days elapse after the claim or alleged claim has been received by the Contractor, and the Contractor is not able to report a settlement or rejection of the claim, it shall report to the CM the steps being taken with respect to the claim.

Without limiting the foregoing, the Contractor shall notify the CM in writing of any paid or incurred claims which may impair annual aggregate or general liability.

### 5.1.7 insured Retentions

### Deductibles and Self-

Any deductibles or self-insured retentions must be declared to and approved by the CM. At the option of the CM, either: the insurer shall reduce to a maximum of \$250,000 or eliminate such deductibles or self-insured retentions with respect to the CM, or the Contractor shall provide evidence of collateral provided to insurers or procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the deductible or self-insured retention amount. Any self-insured retention or deductible amount on the policy shall not reduce the amount of collectible limits or liability.

### 5.1.8

### Subcontractors

The Contractor shall include all Subcontractors as Insureds under its policies, or shall furnish separate certificates, policies, and endorsements for each Subcontractor the Contractor intends to use. If a Subcontractor does not take out insurance in its own name and the Contractor wishes to provide insurance protection for such Subcontractor and such Subcontractor's employees, the Contractor shall either (a) procure appropriate policies in the name of the Subcontractor, or (b) cause a rider or riders to be attached to the Contractor's policies which shall identify the Subcontractor thereby covered; provided, however, in the case of the latter option, such a rider need not be attached to the Contractor's workers' compensation policy if such policy by its terms is sufficiently broad to cover the employees of all Subcontractors performing Work under the Contract Documents. Except as otherwise approved by the CM in writing, Limits of Liability and coverage scope must be at a minimum as stringent as required of the Contractor by the Contract Documents. All Work performed for the Contractor by any Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance as provided



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herein. Insurance monies received from any loss shall be divided as the respective interest of the parties affected shall appear.

### 5.2 PROPERTY INSURANCE

The CM shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss. The insurance shall provide for the cost of replacement for the Work at the time of any loss. The insurance shall include as named insureds the Owner, the CM, the Contractors and their Subcontractors and shall insure against the loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, damages resulting from defective design, negligent workmanship or defective material. The CM shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost of the Project.

The CM shall provide the Contractor, if requested, with copies of all policies thus obtained for the Project. The CM shall provide the Contractor with thirty (30) days notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

The Contractor and the CM waive all rights against each other and against the other separate contractors, the Owner, and their respective consultants, agents and employees for damages occurring during construction and covered by builder's risk and any property insurance required for this Project excluding Owners' Property insurance. The Contractor and the CM shall each require appropriate similar waivers from the Owner, the other separate contractors, their Subcontractors, and their consultants and agents. This waiver does not apply to design liability.

The Contractor is responsible for all physical damage to owned or rented machinery, tools, equipment, forms, and other items owned, rented or used by the Contractor and/or Subcontractor(s) in the performance of the Work. The insurance coverage evidencing such shall include a waiver of subrogation in favor of the CM, the Owner and the Designer and their respective consultants and agents.

The Contractor shall provide valuable papers and records insurance with coverage in an amount commensurate with project scope as set forth in the Supplementary General Conditions.

If the Project includes as addition to or is adjacent to an existing structure, the CM, the separate Contractors and the Subcontractors shall be named as additional insureds for the Owner's property insurance covering such structure and its contents.

If the Owner occupies or uses a part or parts of the Project prior to Substantial Completion thereof, such occupancy shall not occur until the Owner obtains property insurance for the structure and until all insurance companies providing insurance for the Project consent to such occupancy by endorsement to the insurance policies.

### 5.3 CONTROLLED PROJECT SPECIFIC INSURANCE

OWNER



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In the event the Owner elects to purchase project-specific insurance affording coverage to the Contractor and Subcontractors, the terms and conditions of such coverage shall be set forth in the Supplementary Conditions.

### 5.4 AS JOINT VENTURE

### CONTRACTOR

If the Contractor is completing this Project on a joint venture basis, both joint venture partners retain all liabilities assumed by this Agreement, individually and collectively. This may include, but is not limited to, all premiums due, deductibles/self-insured retentions, coinsurance provisions, claim provisions, insurance policy conditions, and indemnification provisions hereunder.

Evidence of a Blanket Joint Venture Endorsement must be obtained from the General Liability and Contractor's Pollution Legal Liability carriers of each joint venture partner substantially as follows:

*With respect to "your work", and the "products-completed operations hazard", you are an insured for your liability arising out of the conduct of any partnership or joint venture of which you were a partner or member, even though this partnership or joint venture is not shown as a Named Insured in the Declarations. This coverage is excess over any available liability purchased specifically to insure the partnership or joint venture. This coverage will not inure to the benefit of any other party except you."*

### 5.5 INDEMNIFICATION

The Contractor, to the fullest extent not expressly prohibited by law, shall defend, indemnify, and save harmless the CM, the Owner, the Designer, and their respective officials, officers, employees, and agents from and against any and all liabilities (foreseeable or unforeseeable), penalties, fines, forfeitures, demands, claims, causes of actions, suits, judgments, and costs and expenses incidental thereto, (including, without limitation, amounts paid pursuant to investigations, defense or settlements, and reasonable attorneys' fees), which any or all of them may hereafter suffer, incur, be responsible for, or pay out as a result of but not limited to:

- a) bodily injury (including sickness, disease, or death) to any person including, but not limited to, the Contractor's employees or its representatives while on the site of the Project; or
- b) actual or alleged damage (including loss of use) to any property (public or private, including the Project or other property on the Project site); or
- c) contamination of or adverse effects on the environment arising directly or indirectly out of or in connection with the performance of the Work, including but not limited to any hazardous or toxic waste, substance, or constituent of any substance subject to regulation under CERCLA, RCRA, TSCA, and other Federal and state authorities that is spilled, released, threatening to release, or disposed of or destroyed by the



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Contractor or its Subcontractors on or off the site of the Project or while in transport to or from the site; or

- d) any violation or alleged violation of laws and regulations, arising out of or in any way connected with the Work,

caused in whole or in part by the Contractor, any Subcontractor or supplier or any representatives of the Contractor. The Contractor shall not be required to indemnify any person against losses resulting from a breach of contract or resulting from negligence, misconduct or violation of laws on the part of any person indemnified hereunder.

The Contractor further agrees to obtain, maintain, and pay for such liability insurance coverages and endorsements as will insure the provisions of this paragraph 5.4. Furthermore, the Contractor agrees to be liable for and to indemnify and reimburse the CM and the Owner for all legal fees and disbursements paid or incurred to enforce the provisions of this paragraph 5.4. The indemnification obligations under this paragraph 5.4 shall not be limited in any way by the amount or type of damages, compensation or benefits payable under worker's compensation acts, disability benefit acts, other employment benefit acts, or the amount of insurance carried or recovered.

The CM acknowledges that hazardous or toxic waste, material, chemicals, compounds or substances, or other environmental hazards, contamination or pollution, (referred to hereinafter as "environmental hazards") may be present at the Project site that were not created, generated, or released at the Project site by the Contractor or its Subcontractors, agents or employees, acting alone or in concert with others. Unless the remediation, abatement or handling of such environmental hazards is part of the scope of the Work under this Agreement, then upon the discovery of such environmental hazards, the Contractor shall immediately, and in no event more than three days after such discovery, give notice to the CM of the environmental hazards before they are disturbed. The CM, the Owner and the Designer shall thereupon promptly investigate the environmental hazards, and make such changes in the Drawings and/or Specifications as they may find necessary to abate, remediate, isolate or handle the environmental hazards. Any increase or decrease in the Contract Price or the Contract Time resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes. It is agreed that the Contractor shall have no liability under this Agreement for any environmental hazards existing at, on or in the Project site prior to the date that Work commences under this Agreement unless the Contractor or its Subcontractors, agents or employees, acting alone or in concert with others, by their own negligence or misconduct, release or expose the Owner or third parties to the environmental hazards.

The provisions of this paragraph 5.4 shall survive the termination or cancellation or completion of this Agreement.

### **ARTICLE 6. OTHER RECORD DOCUMENTS AND SUBMITTALS**



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- 6.1 The CM shall furnish to the Contractor the number of copies of Drawings and Specifications stated in the Supplementary Conditions. Additional copies of Drawings and Specifications may be obtained at the cost of reproduction and handling.
- 6.2 The Contractor shall submit to the CM for forwarding to the Designer all Submittals required by the Contract Documents. The Contractor shall submit four (4) reproducible prints of all shop drawings plus the number of copies sufficient for its requirements. The Contractor shall submit samples in quantities required by the Contract Documents. The Contractor shall submit product data in five (5) copies, plus the number of copies sufficient for the Contractor's requirements. All shop drawings shall be reviewed by the Contractor and shall bear the Contractor's stamp of approval before being forwarded to the CM and the Designer. Submittals shall be submitted in such time as to cause no delay to the Work or any part thereof and in accordance with the Contractor's Construction Schedule and Submittal Register. The CM shall review and process the submittal with reasonable promptness, noting desired corrections, if any. The CM shall retain three (3) copies of the submittal and shall return the balance of the reviewed submittal to the Contractor for action. The Contractor shall furnish any corrected submittal to the CM for forwarding to the Designer. The CM shall retain three (3) copies of the corrected submittal for the records of the CM and the Designer, and will return the balance of the reviewed submittal to the Contractor.
- Subject to paragraph 6.3 herein, no substitutions will be accepted after the bids have been received. All substitutions prior to the receipt of bids shall be in accordance with the Contract Documents.
- The Contractor acknowledges that the processing of shop drawings and other submittals is directly impacted by the clarity, completeness, and accuracy of said documents and that it is the Contractor's responsibility to (i) review and coordinate each submittal with all other related or affected Work and (ii) approve each submittal before submitting same to the CM for approval.
- 6.3 No substitutions and no deviations from any requirement of the Contract Documents shall be deemed allowed unless the Contractor has specifically informed the CM in writing of such deviations at the time of submittal and the Designer and the Owner have given written and specific approval to the substitutions or deviations. In proposing a deviation or substitution, the Contractor warrants to the CM, notwithstanding any review, allowance or approval by the Designer or the Owner, that the deviation or substitution is at least equal to or better in quality and for the purpose intended, and that the Contractor shall not by reason of any such review, allowance or approval be relieved from any obligation or responsibility contained in the Contract Documents.
- 6.4 Review of submittals by the CM and the Designer shall not be construed as relieving the Contractor from responsibility for compliance with terms or designs of the Contract Documents nor from responsibility for errors of any sort in the submittal.
- 6.5 The Contractor shall keep one record copy marked "As-Built" of all Specifications, Drawings, Addenda, Modifications, and Submittals at the Project in good order and



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annotated at least monthly to show all changes made during the construction process. Such monthly annotations and their approval by the CM shall be a condition precedent to approval by the CM of each monthly Request for Payment. Said record copy shall be stored at the Project and fully protected from damage by fire or other hazard. This record copy shall be available to the CM, the Designer and the Owner for inspection at all times. The complete record copy shall be delivered to the CM for review and transmittal to the Designer for the Owner's purposes prior to the Designer's certifying Substantial Completion of the Work.

- 6.6 At completion of the Project and before Final Payment, the Contractor shall assemble and deliver to the CM one complete set of all as-built drawings and one complete set of all approved submittals, product data, and samples which were reviewed by the Designer. These drawings and submittals shall be on paper, or in electronic or other media if required by the Supplementary Conditions. These drawings and submittals shall be categorized and packaged as directed by the Designer.

### ARTICLE 7. CONTRACTOR

- 7.1 The Contractor shall supervise and direct the Work efficiently and with the Contractor's best skill and attention. Except as may be set forth specifically in the Contract Documents, the Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs in connection with the Work. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

- 7.2 The Contractor shall appoint a competent Project Manager with general authority to manage the Project for the Contractor. The Contractor also shall keep on the Project at all times during the Work of the Contractor a competent Resident Superintendent and necessary assistants who shall not be replaced without prior written approval by the CM except under extraordinary circumstances, in which event immediate written notice shall be given to the CM. If approved by the CM, taking into account the scope and complexity of the Work of the Contractor, the Project Manager and the Resident Superintendent may be the same person. At any time, the CM, in its sole and absolute discretion, may require the Contractor to replace the Project Manager or Resident Superintendent with an experienced and competent person or persons upon seven (7) days written notice from the CM to the Contractor. Such replacement shall be at the Contractor's expense and at no cost to the CM.

Both the Project Manager and the Resident Superintendent shall have authority to act on behalf of the Contractor, and instructions, directions or notices given to either of them shall be as binding as if given to the Contractor.

- 7.3 The Contractor shall provide sufficient competent and suitably qualified personnel, equipment, and supplies to lay out the Work and perform construction as required by the Contract Documents. The Contractor will at all times maintain good discipline and order at the site, and will comply with all applicable OSHA standards.



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Any person employed by the Contractor, by any Subcontractor, or by any sub-subcontractor who, in the opinion of the CM, the Designer or the Owner, does not perform its Work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the CM, be removed forthwith by the Contractor, Subcontractor, or sub-subcontractor employing such person without cost to the CM, and shall not be employed again in any portion of the Work without the prior written approval of the CM.

Should the Contractor fail to remove such person or persons or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work within three (3) days after written order, the CM may withhold further payment by written notice until compliance with such order.

7.4 If, in the opinion of the CM, the Designer or the Owner, any Subcontractor on the Project is incompetent or otherwise unsatisfactory, such Subcontractor shall be replaced by the Contractor with no increase in the Contract Price if and when directed by the CM in writing.

7.5 The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools appliances, fuel, light, heat, and all other facilities and incidentals necessary for the execution, maintenance, initial operation, and completion of the Work, other than those specifically excluded by the Contract Documents and to be furnished by the CM or others. When use or storage of hazardous materials or equipment or methods of more than ordinary risk are necessary in accomplishing the Work, the Contractor shall give the CM reasonable advance notice.

If any materials are to be furnished or installed by the CM or others under the terms of the Contract Documents, said materials shall be made available to the Contractor at the location(s) specified in the Contract Documents. All costs of handling, transportation from the specified location to the Project, storage, and installing of materials furnished by others shall be included in the Contract Price. The Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies which may occur during the Contractor's handling, storage, or use of material furnished by others. The CM shall deduct from any monies due or to become due the Contractor any cost incurred by the CM in making good any such damage, loss, or deficiency.

All equipment which is proposed to be used in the Work shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously completed Work, adjacent property, or existing facilities shall result from its use.

When the methods and equipment to be used by the Contractor accomplishing the Work are not prescribed in the Contract Documents, the Contractor shall be free to use any methods or equipment that will accomplish the Work in conformity with the requirements of the Contract Documents.

When the Contract Documents specify the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized in writing by the CM. If the Contractor desires to use a method or type of equipment other than that specified in the



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Contract Documents, the Contractor may request authority from the CM to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it shall be on the condition that the Contractor shall be fully responsible for producing Work in conformity with the requirements of the Contract Documents. If, after trial use of the substituted methods or equipment, the CM or the Designer determines that the Work produced does not meet the requirements of the Contract Documents, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining Work with the specified methods and equipment at no additional cost to the Owner. The Contractor shall remove any deficient Work and replace it with Work of specified quality, or take such other corrective action as the CM may direct. No change in the Contract Price or in Contract Time shall be made as a result of authorizing a change in methods or equipment under this paragraph.

- 7.6 All materials and equipment shall be new, except as otherwise provided in the Contract Documents. When special makes or grades of material which are normally packaged by the supplier or manufacturer are specified or approved, such materials shall be delivered to the Project site in their original packages or containers with seals unbroken and labels intact.

Materials shall be so stored as to assure the preservation of their quantity, quality and fitness for the Work. Stored materials, even though approved before storage, may again be inspected by the CM, the Designer or the Owner prior to their use in the Work and shall be required to meet the requirements of the Contract Documents at the time they are incorporated into the Work. Stored materials shall be located so as to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the CM. Materials to be stored at the Project or on the Owner's property shall not create an obstruction to the Owner's or other contractor's reasonable activities. Private property shall not be used for storage purposes without written approvals consistent with the provisions of paragraph 20.3 of these General Conditions. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the CM a copy of the property owner's permission. All storage sites on private or the Owner's property shall be restored to their original condition by the Contractor at its entire expense, except as otherwise agreed to (in writing) by the owner or lessee of the property.

- 7.7 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processor, except as otherwise provided in the Contract Documents.

- 7.8 The Contractor will be fully responsible for all acts and omissions of its Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that the Contractor is responsible for the acts and omissions of the Contractor's own employees. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor or supplier and the CM, the Owner or the Designer, or any obligation on the part of the CM, the Owner or the Designer to pay or see to the payment of any money due any such Subcontractor or material furnishers except as may otherwise be required by law. The CM may furnish to any



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Subcontractor or supplier, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done.

- 7.9 The divisions and sections of the Specifications and the identifications of any Drawings shall not control the Contractor in dividing the Work among Subcontractors.
- 7.10 The Contractor agrees to bind specifically every Subcontractor to the terms and conditions of the Contract Documents for the benefit of the CM and to furnish written evidence thereof to the CM within seven (7) days after written request by the CM.
- 7.11 The Contractor shall attend job progress conferences and all other meetings or conferences as directed by the CM. The Contractor shall be represented at these job progress conferences by a representative having the authority of the Project Manager and by such other representatives as the CM may direct. Job progress conferences shall be open to Subcontractors, suppliers and any others who may contribute beneficially toward maintaining required job progress, and such personnel shall be encouraged by the Contractor to attend. It shall be the principal purpose of job progress conferences to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the Project on schedule and to complete the Work and the Project by the specified Completion Dates. The Contractor shall be prepared to assess progress of the Work as required in the Contract Documents and to recommend remedial measures for correction of progress as may be appropriate. The CM shall preside as chairman and arrange for minutes to be taken and circulated.

In the event that the prosecution of the Work is discontinued for any reason, the Contractor shall notify the CM at least forty-eight (48) hours in advance of resuming operations.

Should the terms of the Contract Documents require completion of one or more portions of the Work for the Beneficial Occupancy of the Owner prior to completion of the entire Work, the Contractor shall complete such portion(s) of the Work on or before the date specified. Such completion shall include the obtaining of all government or other permits, permission, and/or approvals necessary to occupancy. The Contractor shall independently estimate the difficulties involved in arranging the Work to permit such Beneficial Occupancy and shall not claim any additional compensation or time extension by reason of any delay or increased cost due to completing such portion(s) of the Work. The Owner's possession and use of such portion(s) of the Work shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. The Owner shall be responsible for the security, maintenance, utilities, and insurance of all portions of the Work completed and beneficially occupied by the Owner.

- 7.12 The Contractor shall pay all license fees and royalties, and assume all costs incident to the use of any invention, design process, or device which is the subject of patent rights or copyrights held by others, except for inventions, design processes, or devices specified by the Designer in the Contract Documents. The Contractor shall indemnify and hold harmless the CM, the Owner, the Designer, and anyone directly employed by any of them, from and against all claims, damages, losses and expenses, including attorney's fees and costs of defense, arising out of any infringement or alleged infringement of such rights during or



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after completion of the Work, and shall defend all such claims in connection with any actual or alleged infringement of such rights.

- 7.13 The Contractor shall secure and pay for all permits, including without limitation construction permits and licenses, and will pay all governmental charges and inspection fees necessary for the prosecution of the Work.
- 7.14 The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work and shall protect and indemnify the CM, the Owner, the Designer, and their respective officials, officers, agents, employees or servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or by the Contractor's employees, Subcontractors, sub-subcontractors, or their employees.
- 7.15 The Contractor shall be responsible for the reasonable and necessary protection and security of its Work and its property and the property of others at the site, as required by laws or ordinances governing such conditions, or by custom or sound construction practices, and shall share such responsibilities for protection of property at the site as may be directed by the Contract Documents and the CM. The Contractor shall be responsible for any damage to the Owner's property, or that of others, by the Contractor or the Contractor's employees, Subcontractors, sub-subcontractors, or their employees or agents, and shall make good such damages. The Contractor shall be responsible for and pay for any such claims made against the CM or the Owner.
- 7.16 The Contractor shall comply with the Project Safety Program and Public Hazard Control Plan implemented by the CM. The Contractor shall protect existing improvements designated to remain in the vicinity of the operations and barricade all walks, roads, and areas as necessary to keep the public away from the construction.
- 7.17 The Contractor shall provide cover and/or protect all portions of the Work and provide all materials necessary to protect the Work whether performed by the Contractor or any of the Subcontractors or sub-subcontractors. Any Work damaged through the lack of proper protection, or from any other cause, shall be repaired or replaced without extra cost to the CM or extension to the Contract Time.

The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective effort prosecuted day by day, with adequate equipment and forces so that the Work is maintained in satisfactory condition at all times. All costs of maintenance shall be included in the Contract Price and the Contractor will not be paid an additional amount for such effort. Should the CM observe that the Contractor at any time has failed to maintain the Work as provided herein, the CM may immediately notify the Contractor of such non-compliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. Should the Contractor fail to properly respond to the CM's notification, the CM may, at the Contractor's expense, take such action as it may deem appropriate to remedy the defective maintenance, including suspension of the Contractor's Work or any part thereof. Any such expense incurred by the CM shall be deducted from monies due or to become due the Contractor.



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Parking lots, streets, and walks connecting to the Project area shall at all times be protected by the Contractor from deposits of mud, sand, stone, litter, or debris in any form.

Pedestrian traffic areas around the construction limits must be maintained in a clean and safe condition at all times with required barricades and covered walkways. When excavation or other operations outside the Project limits is required, the Contractor shall, immediately following that work, return the area to its original condition.

All catch basins and storm drain lines in the vicinity of the Project site shall be protected at all times from entry of dirt, rubble and other debris. The residue from the cleaning of trucks, wheelbarrows, concrete buggies, etc. must be prevented from entering the drainage system, and if cleaning is done, the residue must be contained and removed from the Project site with other refuse.

7.18 No burning of refuse or debris shall be allowed inside or around the Project during the course of construction without prior written authority from authorities having jurisdiction and the CM and the Owner.

7.19 The Contractor shall provide for and maintain necessary safety measures and safety programs for the protection of its employees and other persons at the Project site, and shall comply at all times with the requirements of the most current edition of the CAGC Safety and Health Manual [or the AGC Accident Prevention Manual in Construction], or the equivalent requirements of the Contractor's safety program, and shall fully comply with all Federal, State, and local laws, rules, regulations, and building code requirements so as to prevent accidents or injuries to persons on or about the Project site. The Contractor shall clearly mark or post signs warning of existing hazards, and shall barricade excavations, elevator shafts, stairways, floor and wall openings and similar hazards. The Contractor shall protect against damage or injury resulting from falling materials, and shall maintain all protective devices and signs throughout the progress of the Work.

All trenches, excavations, or other hazards in the vicinity of the Work shall be well barricaded, and properly lighted at night. When Work requires closing of an area normally used by the Owner or the public, the Contractor shall furnish, erect, and maintain temporary barricades, and properly light the area. The Contractor shall comply with any directions and public authorities in this respect.

7.20 The Contractor shall adhere to the rules, regulations, and interpretations of the North Carolina Department of Labor's Occupational Safety and Health Standards for the Construction Industry (29 CFR Part 1926 as adopted in 13 NCAC 07F.0201, including 29 CFR Part 1910 General Industry Safety and Health Standards applicable to construction) and N.C. Gen. Stat. §95-126 through 155 (Occupational Safety and Health) as well as all revisions and amendments to such standards or statutes as may occur throughout the performance of the Work.

7.21 Any land-disturbing activity performed by the Contractor in connection with the Project shall comply with all erosion control measures set forth in the Contract Documents and any additional measures which may be required in order to ensure that the Project is in full



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compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15 North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 NCAC 4A, 4B, and 4C), and as may be revised or amended in the future. Upon receipt of notice that a land-disturbing activity is in violation of said Act, the Contractor shall be responsible for ensuring that all steps or actions necessary to bring the Project in compliance with said Act are promptly taken. The Contractor shall be responsible for all penalties assessed pursuant to N.C. Gen. Stat. 113A-64 with respect to its Work, and shall indemnify and hold harmless the CM and the Owner from all costs and expenses, including attorney's fees and costs of defense, arising out of or related to the enforcement of the Act against any party or person described in this Article.

- 7.22 The Contractor shall designate a responsible officer or employee as safety inspector, whose duties shall include accident prevention on the Project as well as implementation of the Contractor's safety measures and safety programs on the Project. The name of the safety inspector shall be made known to the CM at the pre-construction conference.
- 7.23 In emergencies affecting the safety of persons, the Work, or property at the Project site or adjacent thereto, the Contractor is obligated to act in the Contractor's discretion to prevent threatened damage, injury, or loss. As soon as practicable, the Contractor shall notify the CM of such emergency. The Contractor shall give the CM prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused by such emergency. If the Contractor believes that additional work done in an emergency entitles the Contractor to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided in Articles 14 and/or 15 of these General Conditions.
- 7.24 The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the Work. At least weekly and at the completion of the Work, the Contractor shall remove all waste materials and rubbish attributable to the Contractor's Work from and about the Project. At the completion of the Work, the Contractor shall remove all tools, construction equipment, machinery, and surplus materials. The Contractor shall leave the Work in condition for occupancy by the Owner such that no cleaning or other operations are required. Material cleared from the Project and deposited on adjacent property shall not be considered as having been disposed of satisfactorily. If the Contractor fails to keep the Project clean and free of waste materials or rubbish, fails to satisfactorily clean-up weekly or at the completion of the Work, the CM may do so and the costs thereof may be deducted from any amounts due or to become due the Contractor.
- 7.25 Utilities, temporary facilities, and signs shall be provided as described in the Contract Documents. Absent a contrary direction in the Supplementary Conditions, the Contractor shall pay all bills for its consumption of water, electricity, or other public utility service to the Project site.
- 7.26 The Contractor shall indemnify and hold the CM, the Owner, the Designer, the Designer's consultants, and their respective officers, agents, and employees harmless against all costs, damages, and expenses, including attorney's fees and costs of defense, arising out of claims by any separate contractor or by any Subcontractor, sub-subcontractor, or



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supplier engaged by or employed by the Contractor or employed by any of the Subcontractors claiming through him, including without limitation damages, losses, and expenses arising out of or relating to any inconvenience, delay, interference, or other action or non-action of the Contractor or the Contractor's Subcontractors on the Project.

The Contractor acknowledges that should the Contractor or any of the Contractor's Subcontractors be damaged by any breach of contract by any other separate contractor on the Project, the Contractor may invoke applicable dispute resolution procedures with said other separate contractor.

- 7.27 Prior to completion of the Work and Final Payment of the Contract Price, excepting only those portions of the Work deemed accepted in accordance with the Contract Documents, the Contractor shall have charge and care of the Work, and shall take every precaution against injury or damage to any party due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall, as required by the CM, replace, rebuild, repair, restore, and make good all injury or damage to any portion of the Work occasioned by any of the above causes before Final Completion and shall bear the expenses thereof.
- 7.28 In the event that the Work, or any portion thereof, is suspended at any time pursuant to an order of the Owner, the Contractor shall obey all instructions of the CM regarding storage of materials, drainage, protection of the Work, and erection of temporary structures during the suspension period.
- 7.29 The CM shall be responsible for the coordination of the Work of the separate contractors, both as to space and time. The CM shall incorporate the Contractor's Construction Schedule into the Master Schedule and coordinate the implementation of the Contractor's Construction Schedule. The CM shall also coordinate close-out of the Project, including but not limited to all testing, inspection, certifications, and approvals required by public agencies.
- The Contractor shall notify the CM promptly of any event or condition which could affect the conduct or progress of the Work and shall cooperate fully with the CM and all other separate contractors on the Project site.
- 7.30 The Owner has delegated to the CM all of its duties to coordinate and to expedite the Work not expressly reserved to the Owner by other provisions of the Contract Documents.
- 7.31 All Work performed pursuant to the Contract Documents shall conform in all respects to the North Carolina State Building Code and all other state, local, and national codes in effect at the time of and applicable to this Work.
- 7.32 The CM shall coordinate and supervise the installation of all sleeves, inserts, chases or other components of the Work needed for mechanical, plumbing, electrical or other work by the various contractors. The responsibility for exact location of such items shall be that of the mechanical, plumbing, electrical or other prime contractor that requires the item for passage or support of its work. Generally, the mechanical, plumbing, electrical or other contractor that requires such items for support or passage of its work shall set its sleeves,



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inserts, chases or other devices. If necessary to maintain the progress of and complete its Work, however, the Contractor may be required to build or set sleeves, inserts, chases or other components of the Work needed for mechanical, plumbing, electrical or other work by other contractors.

- 7.33 The Contractor shall be responsible for permanently fixed service facilities and systems in use during progress of the Work and shall strictly adhere to the following procedures:
- a) Prior to acceptance of the Work by the Owner, the Contractor shall remove and replace any part of the permanent building systems damaged through use during construction.
  - b) Temporary filters shall be installed in each of the heating and air conditioning units, return air grilles, and other locations to prevent intrusion of dust, dirt, and debris during construction. Temporary filters shall be removed and replaced with new filters immediately prior to Substantial Completion.
  - c) Extra effort shall be maintained to keep the building clean and under no circumstances shall air systems be operated if finishing operations are creating dust in excess of what would be considered normal if the building were occupied.
  - d) When the permanent lighting system is used during construction, lamps shall be replaced and shall be new on the date of Substantial Completion.

### **ARTICLE 8. OWNER**

- 8.1 The Owner shall issue communications and notices to the Contractor through the CM to the extent contemplated by the Contract Documents.
- 8.2 In case of termination of the employment of the Designer, the Owner shall appoint as Designer a qualified person who shall have and assume all rights and duties held by the original Designer.
- 8.3 The Owner shall have the right to take possession of and use any portion of the Work notwithstanding the fact that the time for completion of such portion of the Work may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents.
- 8.4 A waiver on the part of the Owner of any breach of any part of the Agreement by the Contractor shall not be held to be a waiver of any other or subsequent breach.
- 8.5 The Owner shall pay all permanent acreage fees, governmental impact fees, and meter deposits for permanent utilities.

### **ARTICLE 9. CONSTRUCTION MANAGER**

- 9.1 The Owner has engaged the CM for the purpose of (i) assisting the Owner and Designer in developing and administering budgets and cost controls, (ii) in evaluating constructability



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and value engineering proposals, (iii) in establishing and maintaining a critical path method (CPM) schedule, (iv) in coordinating and/or expediting all Work on the Project, (v) in coordinating all Work on the Project with other projects being constructed by the Owner or others adjacent to or near the Work, and (vi) for such other purposes as the Owner may deem appropriate.

### ARTICLE 10. DESIGNER

- 10.1 The Designer is charged with responsibility for preparation and interpretation of the Contract Documents. The Designer's decisions relating to aesthetic matters shall be final.
- 10.2 All Work completed under the Contract Documents shall be subject to review by the Designer. No Work is to be covered without the Designer's review or prior authorization. Any Work so covered without the Designer's review or prior authorization shall be uncovered at the Contractor's expense. The Contractor shall notify the CM in writing at least twenty-four (24) hours in advance of covering any Work.
- 10.3 The Designer shall not be responsible for the construction means, methods, techniques, sequences, procedures, or the safety precautions and programs incident thereto, and shall not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents, but shall be entitled to enforce any requirements in the Contract Documents specifying particular means, methods, techniques, sequences, or procedures.
- 10.4 The Designer shall be an Owner's agent during the construction period. The duties, responsibilities and authority of the Designer as the Owner's representative during construction are as set forth in the Contract Documents.

### ARTICLE 11. TESTING AND SURVEYING

- 11.1 Laboratory and field tests to determine compliance of construction with the Contract Documents shall be made by the Owner or testing consultants employed by the Owner except those required elsewhere in the Contract Documents to be paid for by the Contractor. The costs and expenses of providing samples for and assistance in any testing shall be borne by the Contractor and are included in the Contract Price. Any Work in which untested materials are used without approval or written permission of the CM and the Designer shall be removed and replaced at the Contractor's expense. Work found to be unacceptable or unauthorized will not be paid for and, if directed by the CM, shall be removed and replaced at the Contractor's expense. Unless otherwise designated, tests in accordance with the cited standard methods of ASTM or other generally recognized or specifically authorized methods which are current on the date of advertisement for bids shall be made at the expense of the Owner; provided, however, in the event that after such testing any Work is found to be defective or does not meet the requirements of the Contract Documents, the costs of retesting such Work and the costs of inspection services shall be paid by the Contractor. Samples shall be taken by a testing laboratory employed by the Owner. All materials being used are subject to inspection, tests, or rejection at any time prior to or during incorporation into the Work. Copies of all Owner test reports will be



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furnished to the Contractor at its written request. Copies of Contractor test reports shall be furnished to the CM upon written request.

- 11.2 The CM shall have the right to deduct the costs of additional testing as described in paragraph 11.1 from any money due or to become due the Contractor; or if no money is due the Contractor, the CM shall have the right to recover these costs from the Contractor, from its sureties, or from both.
- 11.3 All layouts and surveying shall be accomplished by properly qualified personnel duly licensed in the State of North Carolina.

### **ARTICLE 12. SEPARATE CONTRACTS**

- 12.1 It is expressly understood that the CM and the Owner may deploy their own employees or engage other separate contractors to perform Work as a part of the Project whose work will be performed simultaneously and sequentially with the performance of the Work by the Contractor. It shall be necessary for the Contractor to coordinate construction activities with such other contractors, particularly with respect to access to work areas, storage of materials, and use of elevators and other common facilities. The Contractor shall diligently and in good faith cooperate with the CM, the Owner, the Designer, and all other contractors with respect to such matters and shall regularly and faithfully attend any and all meetings called by the CM with respect to such matters. Any disputes between the Contractor and any other separate prime contractor with respect to such matters shall be resolved in accordance with the claim and dispute resolution procedures in the Agreement.

### **ARTICLE 13. CONTRACT TIME**

- 13.1 Within fourteen (14) days after initial receipt of the Construction Agreement by the Contractor for signatures, the Contractor shall prepare and submit to the CM for review and approval a preliminary Contractor's Construction Schedule for the Work pursuant to the requirements stated in the Contract Documents.
- 13.2 Within fourteen (14) days after initial receipt of the Construction Agreement by the Contractor for signatures, the Contractor shall submit to the CM a Submittal Register listing all Submittals the Contractor is required to make or proposes to make under the Contract Documents, the dates on which the Contractor proposes to make such Submittals and the dates by which the Contractor reasonably requires a response from the CM and the Designer with respect to each Submittal. The dates submitted shall be incorporated into the Contractor's Construction Schedule as Completion Dates when they have been approved or modified by the Owner. The CM and the Designer shall not be required to review any Submittal from the Contractor until a Submittal Register acceptable to and approved by the CM has been submitted by the Contractor.
- 13.3 Not later than thirty (30) days following execution and delivery of the Construction Agreement by the CM to the Contractor, the CM shall deliver to the Contractor a Notice to Proceed. The Notice to Proceed shall state a commencement date on which it is expected that the Contractor will begin the Work to be performed under the Agreement. The Contract Time shall be measured from said specified commencement date. The commencement



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date stated in the Notice to Proceed shall not be earlier than three (3) days after the Notice to Proceed is served on the Contractor.

If, other than by mutual agreement, said specified commencement date is more than thirty (30) days after the date of execution and delivery of the Agreement from the CM to the Contractor and the Contractor believes said delay justifies an increase in Contract Price and/or an extension of Contract Time, the Contractor may make a claim therefore as provided in Article 14 and/or Article 15 of these General Conditions.

No Work shall be done prior to the date specified in the Notice to Proceed.

The Contractor shall submit a final Contractor's Construction Schedule for approval by the CM no later than fourteen (14) days after issuance of the Notice to Proceed. No payments shall be due the Contractor until this schedule is approved by the CM.

- 13.4 The Master Schedule is a Contract Document. The Contractor represents that the Master Schedule has been reviewed in detail and taken into account in preparing its bid. The Contractor's Construction Schedule shall be incorporated into the CM's Project Master Schedule. The Contractor's Construction Schedule shall include all of its activities which impact, limit, or otherwise affect the time of completion of the Project as shown in the Master Schedule, and all of the activities of others which impact, limit, or otherwise affect the start, duration, or completion of the Contractor's activities. The Contractor further represents that the Contractor can and will complete each activity within the time shown for that activity on the Contractor's Construction Schedule. Time is of the essence with respect to each such activity and Completion Date.
- 13.5 If the Contractor submits a construction schedule, progress report, or any other document that indicates or otherwise expresses an intention to achieve completion of the Work prior to any Completion Date required by the Contract Documents or prior to expiration of the Contract Time, no liability of the CM to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.
- 13.6 If the Contractor, for reasons beyond the Contractor's control, is delayed in beginning any activity, the Contractor shall, nevertheless, have the same number of days as is shown in the Master Schedule for the activity, and the affected activity and any succeeding activity that is dependent upon that activity shall be adjusted accordingly; provided that at any time the CM, by means of a Change Order, may require the Contractor to work overtime, to increase labor forces or to take any necessary or appropriate action to decrease the time required for any activity, and the Contractor shall be entitled to an adjustment in the Contract Price computed in accordance with Article 15 of these General Conditions.
- 13.7 At any time, the CM may order the Contractor, on seven (7) days written notice, to begin any activity earlier than the starting date shown on the Master Schedule.
- 13.8 Should the Contractor fail to start any activity on the start date shown in the Master Schedule or as it may have been adjusted in accordance with paragraphs 13.6 or 13.7



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above, or become delayed, the Contractor shall, without being entitled to any increase in the Contract Price or other compensation, work overtime, increase labor forces or take such other action as may be necessary or appropriate to complete the activity by the Completion Date shown on the Master Schedule, or as such Completion Date may have been adjusted.

- 13.9 The CM shall monitor progress of the Work at all times and the Contractor shall cooperate with such monitoring and provide any and all information with respect to the progress of the Work and scheduling as the CM may reasonably require.
- 13.10 On a monthly basis, in consultation with the Contractor, the CM shall revise the Master Schedule, showing any adjustments made in accordance with paragraphs 13.6 or 13.7, above, by any Change Order, the progress of the Work, and any days gained or days lost with respect to any activity, and shall furnish copies thereof to the Contractor.
- 13.11 Should any monthly revision of the Master Schedule show that the Contractor is behind on any activity, the late completion of which could delay Substantial Completion of the Work, the CM shall be entitled to withhold from the next Progress Payment due the Contractor an amount sufficient to reimburse the CM for any and all delay damages, should Substantial Completion be delayed by the same number of days that the Contractor is currently behind schedule. If, subsequently, the Contractor's progress, as shown by any succeeding monthly revision to the Master Schedule, is such that the anticipated delay no longer exists, the CM shall pay with the Progress Payment next due to the Contractor such amounts as have been withheld in accordance with this paragraph.
- 13.12 The CM shall have the right to perform Work, hire and employ labor and craftsmen, rent equipment, subcontract with other parties, or do anything that the CM deems necessary or appropriate to remedy or cure any delay by the Contractor in the progress of the Work. Such action by the CM shall not, in any way, affect, void or limit any warranty, guaranty or other responsibility of the Contractor under the Contract Documents. Such action may be taken by the CM only after three (3) days written notice to the Contractor. All costs incurred by the CM in taking any such action shall be charged to the Contractor and deducted from any amounts remaining due under the Agreement.
- 13.13 The Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Price) for delays arising from unforeseen causes beyond the control and without the fault or negligence of the Owner, the Designer, the CM, the Contractor or the Contractor's Subcontractors as follows:
- a) Labor disputes and strikes that directly impact the critical path activities of the Master Schedule;
  - b) Acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damage completed Work or stored materials.
  - c) Acts of the public enemy; acts of the State, Federal, or local government in their sovereign capacities.



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d) Abnormal inclement weather as defined in Article 13.14.

13.14 On any day that the Contractor considers that the Project is delayed by adverse weather conditions, the Contractor shall identify in writing to the CM the adverse weather conditions affecting each activity, the specific nature of the activity affected, the number of hours lost, and the number of and identity (by responsibility or trade) of workers affected and shall obtain from the CM written recognition of the delay. The time for performance of this Contract includes an allowance for a number of calendar days which may not be suitable for construction Work by reason of adverse weather. The Contract Time will be extended only if the number of calendar days of adverse weather recognized by the CM exceeds the number of inclement weather days set forth below, and the Contractor demonstrates how this adverse weather impacts activities on the critical path of the Master Schedule.

<u>Month</u>	<u>Number of Inclement Weather Days</u>
January	7
February	6
March	7
April	6
May	7
June	6
July	8
August	6
September	5
October	5
November	5
December	9

13.15 If the Contractor believes that the progress of the Work has been adversely affected by adverse weather recognized by the CM during a particular month, the Contractor shall submit a written request for extension of time to the CM. Such a request for time extension of the Contract Time shall be submitted by the tenth (10th) day of the month following that month in which the adverse weather is encountered. The request shall include, but is not limited to, the following information:

- a) Detailed description of weather's effect on scheduled activities and its net effect on the critical path of the Project, and
- b) Weather records from the official weather station nearest the Project site and records of actual observation as contained in daily reports, correspondence, or other documentation.

13.16 The Contractor specifically recognizes that a delay by the Contractor in achieving any Completion Date can have the effect of delaying the Substantial Completion of the Project, or could force the CM to accelerate the Contractor's Work or the work of other contractors. Such delay in achieving a Completion Date will necessarily cause damages, losses, and expenses to the CM, including, but not limited to and by way of illustration only, liquidated damages payable to the Owner, damages payable to other contractors, increased and extended Project overhead, increased fees, increased costs of construction, increased and



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extended operation costs of other facilities, and inefficiency and loss of productivity. Such damages, losses, and expenses may be recovered from the Contractor and, if the Contractor is bonded, its surety.

- 13.17 The sum for liquidated damages payable to the Owner is the amount stipulated in the Construction Management Contract and reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of said CM and the Contractor(s) to complete the Project within the time specified in the Construction Management Contract, such time being in the essence of this Agreement and a material consideration thereof.

### **ARTICLE 14. CHANGES IN THE WORK**

- 14.1 Without invalidating the Contract Documents, the CM may, at any time, or from time to time order additions, deletions, or revisions in the Work. Said additions, deletions, or revisions shall be authorized only by written Change Orders, Construction Change Directives or Field Orders. Upon receipt of a Change Order, Construction Change Directive or Field Order, the Contractor shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any change causes an increase or decrease in the Contract Price and/or an extension or shortening of the Contract Time, adjustments shall be made as provided in Article 14 and/or Article 15 of these General Conditions.
- 14.2 If possible, Work shall not begin on any change or alteration to the Work until a written Change Order is executed settling any change in the Contract Price or Contract Time. In the event the Contractor and the CM cannot agree that an adjustment to the Contract Price or the Contract Time is warranted, or cannot agree on the appropriate adjustment to the Contract Price or the Contract Time, in order to expedite the Work and avoid or minimize delay in the Work that might affect the Contract Price or Contract Time, the Contractor shall, if so directed by the CM in writing, nevertheless proceed with the Work, and any adjustment to the Contract Price or Contract Time shall be negotiated by the parties at a later date, utilizing the dispute resolution procedures under this Agreement if necessary. Any claim for an adjustment in Contract Price or Contract Time, if not defined in the Construction Change Directive, shall be promptly made in writing in accordance with the procedures defined in Article 15.2 of these General Conditions.
- 14.3 The Designer, through the CM, may authorize minor changes or alterations in the Work not involving change in the Contract Price or in the Contract Time and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. Such alterations shall not invalidate the Contract Documents nor release the surety. If the Contractor believes that any minor change or alteration authorized by the Designer entitles the Contractor to an increase in the Contract Price and/or an extension of Contract Time, the Contractor may make a claim therefore as provided in Article 14 and/or Article 15 of these General Conditions.
- 14.4 Except in an emergency endangering life or property, no change shall be made by the Contractor except upon prior written Change Order, Construction Change Directive or Field Order authorizing such change.



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- 14.5 Increases in the Contract Price and/or extensions of the Contract Time for additional Work performed by the Contractor shall only be in accordance with a written Change Order or Construction Change Directive signed by the CM. The Contractor shall not be entitled to additional time or to additional compensation for any Work performed or material supplied which is claimed to have been authorized or settled by an "oral" change, or by a "constructive" or "implied" change, or by a course of conduct, or by any action or non-action by the CM, or any other persons, or by any means whatsoever other than by a written Change Order or Construction Change Directive for such Work or material signed by the CM.
- 14.6 Changes in the Work resulting from emergency shall not invalidate the Contract Documents nor release the surety if the Contractor is bonded.
- 14.7 The CM shall not be responsible for verbal instructions which have not been confirmed in writing, and in no case shall such instructions be interpreted as permitting a departure from the Contract Documents unless such instruction is confirmed in writing and supported by a proper Change Order, Construction Change Directive or Field Order, whether or not the cost is affected.
- 14.8 If the Contractor is bonded, the CM, in its sole discretion, may require that the Contractor notify the Contractor's sureties of any changes affecting the general scope of the Work or change in the Contract Price, and that the amount of applicable bonds shall be adjusted accordingly. If this requirement is exercised, the Contractor shall furnish proof of such adjustment to the CM.
- If this requirement is exercised, the Change Orders and Construction Change Directives shall require written consent of the Contractor's surety. At the time of signing a Change Order, the Contractor shall be required to certify as follows:
- "I certify that all sureties have been notified that my contract has been altered by the amount of this Change Order or Construction Change Directive and that a copy of the approved Change Order or Construction Change Directive will be mailed to all sureties upon its receipt by me."
- If this requirement is exercised, no payment to the Contractor on account of any Change Order or Construction Change Directive shall become due or payable until written evidence of the surety's consent to the Change Order or Construction Change Directive has been furnished to the CM, and the furnishing of such written consent is a condition precedent to such payment.
- 14.9 The Contractor shall support all requests for Change Orders with a detailed cost breakdown showing cost of materials, labor, equipment, transportation, other items, Contractor's overhead and profit, and total cost, in accordance with methods defined in this Article, and, if the request seeks an extension of the Contract Time, with a time-related diagram which demonstrates specifically why an increase in construction time is needed.



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- 14.10 When a request for a Change Order involves a Subcontractor, the Contractor shall provide quotation from same on Subcontractor's letterhead. The Subcontractor's quote shall list materials, equipment, and labor separately, and show overhead and profit in the manner provided in paragraph 14.9.

### **ARTICLE 15. CHANGE OF THE CONTRACT PRICE**

- 15.1 The Contract Price constitutes the total compensation payable to the Contractor for performing all Work under the Contract Documents. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor shall be at its expense without change in the Contract Price. The Contract Price may only be changed by a Change Order.

- 15.2 Any claim for an adjustment in the Contract Price shall be in writing. Written notice of any event, action, or non-action which may become the basis of a claim shall be delivered to the CM within three (3) days of the occurrence, or the beginning of the occurrence, of any such event, action or non-action giving rise to the claim. Such written notice is a condition precedent to the making of a claim, and such notice shall describe the basis of the potential claim with reasonable detail and clarity.

A claim shall be made in writing and shall be delivered to the CM no later than fourteen (14) days after such notice. The claim shall describe in detail the basis for the claim, with specific reference to any provisions of the Contract Documents, by paragraph, drawing number, or other specific identification, and shall state the amount claimed and how it is calculated. If the Contractor, at the time the claim is made, is unable to state the amount claimed with accuracy, the Contractor shall so state and provide the estimated amount and the basis on which the amount is to be calculated. At the earliest date practicable, but in no event more than thirty (30) days after Contractor's notice of claim, the Contractor shall supplement the claim with an accurate statement of the amount claimed and how it has been calculated. The Contractor shall provide, in writing, in support of the claim all such explanations, arguments, data, receipts, expert opinions, or other documents or information as the Contractor deems appropriate to be considered in support of the claim. A claim may properly be rejected by the CM by reason of the Contractor's failure to submit adequate or accurate documentation or information, except that within seven (7) days after being given notice that the claim has been rejected on this basis, the Contractor may submit additional documentation or information. No claim for a change of the Contract Price shall be considered or granted (except solely at the discretion of the CM) unless a claim is so made, nor shall the Contractor be entitled to any increase in the Contract Price unless the Contractor has given notice and made such a written claim within the times required. The CM shall decide, after obtaining the advice of the Owner and the Designer, whether an increase in Contract Price is warranted, and the amount of such increase shall be determined as provided in paragraphs 15.3 through 15.4, below. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

The CM shall advise the Contractor of its decision with respect to the claim within thirty (30) days of its receipt, or of the receipt of additional documentation or information if the absence of such has previously been the basis of rejection of the claim. Any claim on which the CM has not provided its decision to the Contractor within the applicable time period shall be deemed denied.



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If the Contractor is not satisfied with the decision of the CM, the Contractor may within seven (7) days of receipt of the CM's decision initiate the mediation process as described in Appendix A to these General Conditions.

15.3 In determining the amount of a Contract Price adjustment, the parties shall apply the following methods, as appropriate:

- (a) Change in Work: The CM and the Contractor shall negotiate in good faith and attempt to agree upon the value of any change (extra or decrease) in Work prior to the issuance of a Change Order covering said Work. Such Change Order shall set forth the corresponding adjustment to the Contract Price. In the event the CM and the Contractor are unable to agree, the CM shall grant an equitable adjustment in the Contract Price.
- (b) Emergency Work: In the event of emergency endangering life or property, the Contractor may be directed by the CM to proceed on a time and material basis, whereupon the Contractor shall so proceed and keep accurately, in such form as may be required by the CM, a correct account of costs together with all proper invoices, payrolls, and supporting data therefore.

15.4 Where the Contract Price is to be adjusted, the following limitations shall apply in determining the amount of adjustment:

- (a) In the case of extra or emergency work, the Contract Price shall not be increased by more than the reasonable, actual, and documented net cost of the extra or emergency work plus ten percent (10%) of such net cost on Work performed by the Contractor and five percent (5%) thereof on any subcontracted Work for overhead and profit combined.
- (b) In the case of a decrease in Work, the Contract Price shall not be decreased by less than the net cost of the deleted Work plus five percent (5%) of such direct net cost for profit and overhead.

The term 'net cost' as used herein shall include, as applicable, and shall be limited to, all direct labor, direct material, direct equipment, labor burden, sales taxes, shipping and handling charges, permits and fees, and insurance and bond premium adjustments, if any, attributable to the change. All other items of cost shall be considered as overhead and covered by the percentages allowed in sections (a) and (b) of this paragraph.

The Contractor shall provide worksheets or tabulations describing the method by which the direct net cost was calculated, and shall provide all data needed to support the calculation of the direct net cost, all in a form acceptable to the CM.

### **ARTICLE 16. UNFORESEEN CONDITIONS**

16.1 Should the Contractor encounter unforeseen conditions at the Project site materially differing from those shown on the Drawings or indicated in the Specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work



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of the character provided for in this Agreement, the Contractor shall immediately, and in no event more than three (3) days later, give notice to the CM of such conditions before they are disturbed. The CM shall thereupon promptly notify the Designer and Owner and investigate the conditions. The CM shall as soon as practicable request that the Designer make such changes in the Drawings and/or Specifications as the CM and the Contractor believe are necessary to continue the Work. Any increase or decrease in the Contract Price resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes. The CM shall not be liable or responsible for additional work, costs, or changes to the Work that could have been reasonably determined from any reports, surveys, and analyses made available for the Contractor's review or that could have been discovered by the Contractor through the performance of its obligations pursuant to the Contract Documents.

### **ARTICLE 17. CORRECTION OF WORK BEFORE FINAL PAYMENT**

17.1 The Owner and the CM have the authority to stop or suspend Work and to order Work removed or to order corrections of defective Work or Work not in compliance with the Contract Documents where such action may be necessary to ensure successful completion of the Work.

Any work, materials, fabricated items, or other parts of the Work which have been found by the CM, the Owner or the Designer to be defective or not in accordance with the Contract Documents shall be condemned and shall be removed from the Project by the Contractor, and immediately replaced by new Work in accordance with the Contract Documents at no additional cost to the CM. Work or property of the Owner or others damaged or destroyed by virtue of such condemned Work shall be made good at the expense of the Contractor.

Correction of condemned Work described above shall be commenced by the Contractor within twenty-four (24) hours after notice from the CM and shall be pursued to completion. Should the Contractor fail to proceed reasonably with the above-mentioned corrections, the CM may, three (3) days after the notice specified in the preceding sentence, proceed with correction, paying the cost, including costs of uncovering such condemned Work, of such corrections from amounts due or to become due to the Contractor.

Condemned Work removed shall be the property of the Contractor and shall be removed from the Project by the Contractor within ten (10) days after notice to remove it, and if not then removed, thereafter may be disposed of by the CM without compensation to the Contractor and the cost of such disposal shall be deducted from amounts due or to become due to the Contractor.

Should the cost of correction of the Work and, if applicable, disposal of the condemned Work by the CM exceed the amount due or to become due the Contractor, the Contractor and the Contractor's sureties shall be liable for and shall pay to the CM the amount of such excess.

### **ARTICLE 18. CORRECTION OF WORK AFTER SUBSTANTIAL COMPLETION; WARRANTIES AND GUARANTIES**



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- 18.1 No certificate of completion by any party, Final Payment, occupation of the premises by the Owner, any provision of the Contract Documents, or any other act or instrument of the CM, the Owner or the Designer shall relieve the Contractor from responsibility for negligence, defective material or workmanship, or failure to comply fully with the Contract Documents.
- 18.2 The Contractor shall, at the Contractor's sole cost and expense, make all necessary repairs, replacements, and corrections of any nature or description, interior or exterior, structural or non-structural, that shall become necessary by reason of defective workmanship or materials which appear within a period of one (1) year from the date of Substantial Completion and acceptance of the Project by the Owner; provided, however that notwithstanding the preceding, if any longer guarantee period is specified for any particular materials or workmanship under the Contract Documents, or under any subcontract, or in connection with any manufactured unit which is installed in the Project, or under the laws of the State of North Carolina, the longer guarantee period shall govern.
- 18.3 If, within any guarantee period, repairs or changes are required in connection with the Work, which are rendered necessary as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract Documents, the Contractor shall, promptly upon receipt of notice from the CM and without expense to the CM:
- a) Completely repair or replace the Work so that it conforms to the Contract Documents;
  - b) Correct all defects therein;
  - c) Make good all damage which, in the opinion of the CM or the Designer, is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract Documents; and
  - d) Make good any Work or material, or any equipment or contents disturbed in fulfilling any such guarantee.

If, in fulfilling the requirements of the Contract Documents or of any guarantee embraced therein or required thereby, the Contractor disturbs any work, facility, premises, or construction belonging to the Owner, the Contractor shall restore such disturbed work, facility, premises or construction to a condition satisfactory to the Owner, and shall guarantee such restored work to the same extent as if it were Work under the Contract Documents.

If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the CM may have the defects corrected, and the Contractor and the Contractor's sureties shall be liable for all expenses incurred. "Promptly" is defined as within twenty-four (24) hours for systems necessary to normal operation of the building and within seventy-two (72) hours for all other items. All special guarantees applicable to definite parts of the Work that may be shown in or required by Contract Documents shall be subject to the terms of this paragraph during the first year of the life of such special



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guarantee. Manufacturer's standard guarantees or warranties which do not comply with the time limit specified herein shall be extended by the Contractor automatically without further action on the part of the CM.

- 18.4 In the eleventh calendar month after Substantial Completion of the entire Project, and at the request of the CM, the Contractor, the CM, the Owner and the Designer shall make an inspection of the Work for the purpose of identifying defective workmanship and/or materials. If the Contractor, having been requested to do so by the CM, fails to participate in such inspection, the Contractor shall be conclusively bound by any decision or ruling by the Designer as to any defective workmanship or material and as to the Contractor's responsibility for its repair or replacement.

### **ARTICLE 19. CM'S RIGHT TO DO WORK**

- 19.1 If, during the progress of the Work or during any period of guarantee, the Contractor fails to prosecute the Work properly or to perform any provision of the Contract Documents, the CM, after three (3) days written notice to the Contractor from the CM, may perform or have performed that portion of the Work and may deduct the cost thereof from any amount due or to become due the Contractor. Notwithstanding any action by the CM under this paragraph, all warranties and bonds given or to be given by the Contractor shall remain in effect or shall be given by the Contractor.
- 19.2 Should the cost of such action by the CM exceed the amount due or to become due the Contractor, the Contractor and the Contractor's sureties shall be liable for and shall pay to the CM the amount of such excess.

### **ARTICLE 20. PARTIAL PAYMENTS**

- 20.1 Within thirty (30) days after initial receipt of the Construction Agreement by the Contractor for signatures the Contractor shall submit to the CM a Schedule of Values. The Schedule of Values shall indicate the value of the Work, including applicable overhead and profit, for each Division and section of the Project Specifications. The CM shall be provided with the Contractor's estimate papers, subcontractor agreements, supplier quotes, or other documents substantiating these values if so requested in writing by the CM. The Contractor shall provide the requested documentation within seven (7) days after receipt of the CM's written request. The Schedule of Values shall be subject to approval by the CM and the Owner, and if the CM and the Contractor cannot agree upon the Schedule of Values, the Designer shall prepare it, and the Schedule of Values as prepared by the Designer shall be binding on the CM and the Contractor. No Request for Payment shall be certified by the CM until the Schedule of Values has been approved by the Owner.
- 20.2 Not later than the fifth (5th) day of each calendar month the Contractor shall submit to the CM a Request for Payment for Work done during the previous calendar month. The Request for Payment shall be in form of AIA Document G702 (latest edition), or other published document approved by the CM, and shall show substantially the value of Work done (including the value of material delivered to the Project or stored by the Contractor at another site, subject to the conditions hereinafter set forth) during the previous calendar month, and shall sum up the financial status of the Work with the following information:



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- a) Total Contract Price, including any adjustment thereto made pursuant to the Contract Documents.
- b) Value of Work completed and materials properly stored to date.
- c) Less amount retained.
- d) Less previous payments.
- e) Current amount due.
- f) Contract Price balance remaining.

The Contractor, upon request of the CM, shall substantiate the Request for Payment with invoices, vouchers, payrolls, or other evidence.

20.3 When payment is requested or made on account of stored materials, such materials must be stored on the Owner's property at such places and in such a manner as may be designated by the CM. However, if approved by the CM, and with permission in writing from the Designer and Owner and under such circumstances as may be required by the CM and the Owner, such materials may be stored in a bonded warehouse. Requests for Payment on account of stored materials shall be accompanied by paid invoices, bills of sale, warehouse receipts, or other documentary evidence establishing Owner's title to such materials, evidence that the stored materials are insured against loss and damage, and such other documentation as required by the CM. Responsibility for the quantity, quality, and condition of such stored materials, whether stored on the Owner's property or away from the Owner's property, shall remain with the Contractor regardless of ownership or title. No payment shall be made on account of materials stored in a bonded warehouse unless the Contractor has acquired written permission from the CM and the Owner for such storage of materials and has complied with all conditions set forth in such permission regarding such storage of materials in a bonded warehouse.

20.4 Any Request for Payment received by the CM on or before the fifth (5th) day of the calendar month shall be certified for payment or returned for re-submission to the Contractor on or before the fifteenth (15th) day of the calendar month. The CM's certification shall be for the amount which was requested or that which the CM has decided was justly due, and shall state in writing to the Contractor and Owner the reasons for withholding payment of any or all of the amount requested.

20.5 The CM may refuse to certify all or part of any payment requested for any of the following reasons:

- a) Refusal by the Designer to certify or the Owner to pay a payment application by the CM for Work by the Contractor.
- b) Defective Work not corrected.



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- c) Suits, actions, or claims of any character filed against the Contractor, or due to the operations of the Contractor, or information or notice that a suit, action, or claim will be filed or has been made.
- d) Information or notice that a Subcontractor or a supplier has not received payment from the Contractor.
- e) The balance unpaid of the Contract Price is insufficient to complete the Work in the judgment of the CM.
- f) Damage to the CM, the Owner or another contractor.
- g) Inability of the Contractor to meet a Completion Date, including an anticipated failure to meet a Completion Date entitling the CM to withhold anticipated damages in accordance with paragraphs 13.11 and 13.12 of these General Conditions.
- h) Failure to furnish Submittal as required by the Contract Documents on a timely basis in accordance with the Submittal Register.
- i) Such other reason as to the CM may appear prudent, proper, or equitable.

When grounds for withholding certification have been corrected or removed, the CM shall make any payment due with respect to such certification as a part of its next payment after such certification.

- 20.6 No certificate of payment issued or progress payment made shall constitute an acceptance of the Work or any part thereof.
- 20.7 The amount certified by the CM for payment shall be ninety-five percent (95%) of the value of Work completed and materials stored since the CM's last certification as shown on the Request for Payment, less any amounts not certified in accordance with paragraphs 20.4 and 20.5, and this amount shall be paid by the CM on or before the last business day of the month, but payment shall not be past due if paid within fifteen (15) days thereafter.
- 20.8 After certification by the Designer and agreement by the Owner and the CM that the Work of the Contractor is fifty percent (50%) complete, based on a determination that the Contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the Contract, (except the value of materials stored on-site shall not exceed twenty percent (20%) of the Contractor's gross project invoices for the purpose of determining whether the Project is fifty percent (50%) complete) and the Contractor has provided to the CM and the Owner the written consent of its sureties to the cessation of further percentage retention, the amount certified for payment with respect to subsequent Requests for Payment shall be one hundred percent (100%) of the value of Work completed and materials stored since the Designer's last certification as shown on the Request for Payment, less any amounts not certified in accordance with paragraphs 20.4 and 20.5; provided, however, that the aggregate of periodic payments to the Contractor shall not exceed ninety-seven and one half percent (97.5%) of the Contract Price. If the Owner determines that the Contractor's performance under the Contract is



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unsatisfactory, the Owner may resume withholding percentage retention from each subsequent periodic payment application up to the maximum amount of five percent (5%) of the Contract Price.

### ARTICLE 21. FINAL PAYMENT

- 21.1 If the Work of the Contractor is limited to demolition, pilings, caissons and/or structural steel, the remaining unpaid balance of the Contractor's Contract Price, less a sum equal to five-tenths percent (0.5%) of the Contract Price, shall be paid within sixty days following receipt of the following documents, all of which must be received before payment shall become due: (i) request for payment from the Contractor; (ii) receipt of consent from the Contractor's surety to the payment; and (iii) approval or certification from the Designer that the work performed by the Contractor is acceptable and in accordance with the Contract Documents.
- 21.2 Except as set forth in paragraph 21.1, within forty five days after Substantial Completion of the Project, the remaining unpaid balance of the Contract Price shall be paid to the Contractor, less an amount equal to two and one-half times the value of punch list work or other work remaining to be completed or corrected, as reasonably estimated by the Owner.
- 21.2 Upon Substantial Completion, the CM in conjunction with the Designer shall prepare and submit to the Contractor deficiency lists identifying all portions of the Work which are shown at that time to be incomplete or defective. Within thirty (30) days of receipt of any deficiency list, the Contractor shall complete and correct all items on that list along with all other Work required to achieve Final Completion of the Work. At any time prior to completion of the period of warranty, the CM may submit to the Contractor supplemental deficiency lists, in which case the Contractor shall complete or correct any and all new items identified on the supplemental deficiency lists within the time period stipulated in paragraph 18.3 of these General Conditions.
- 21.3 The making and acceptance of Final Payment shall constitute a waiver of all claims by the CM except:
- a) Claims arising from unsettled liens or claims against the Contractor.
  - b) Defective Work or materials appearing after Final Payment.
  - c) Failure of the Contractor to perform the Work in accordance with the Contract Documents.
  - d) As conditioned in the Performance Bond.
  - e) Claims made prior to Final Payment which remain unsettled.
  - f) Amounts due arising under Articles 18 and 28 of these General Conditions.
  - g) Claims for recovery of overpayment based upon incorrect measurement, estimate, or certificate.



## GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION – CONSTRUCTION MANAGER AT RISK VERSION

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- 21.4 The making and acceptance of Final Payment shall constitute a waiver of all claims by the Contractor except those claims previously made in writing pursuant to paragraph 15.2 of these General Conditions and not finally resolved.
- 21.5 The CM shall not be required to make Final Payment unless and until (i) the Designer has certified based on the Designer's observations and information that all of the Work by the Contractor under the Contract Documents has been completed in accordance with the Contract Documents, and (ii) the Work by the Contractor has been approved by all federal, state and local agencies having jurisdiction.
- 21.6 The final Request for Payment shall be identified on its face as such and shall be presented by the Contractor to the CM within thirty (30) days of completion of the Work. Final payment of the retained amount due the Contractor shall be made by the CM within thirty (30) days after the later of (i) full and Final Completion of all Work required of the Contractor by the Contract Documents, and certification of such Work in accordance with paragraph 21.5; (ii) submission of the affidavits and other documentation required by Article 22; (iii) submission by the Contractor of a Request for Payment identified on its face as final.

### **ARTICLE 22. CONTRACTOR, SUBCONTRACTOR AND SUPPLIER AFFIDAVIT**

- 22.1 The Final Payment due the Contractor on account of the Contract Documents shall not become due until the Contractor has furnished to the CM: (A) an affidavit by the Contractor signed, sworn, and notarized to the effect that all payments for materials, services, or for any other reason in connection with the Work or performance of the Contract Documents have been satisfied and that no claims or liens exist against the Contractor in connection with the same; (B) affidavits from each Subcontractor and supplier signed, sworn, and notarized to the effect that (i) each such Subcontractor or supplier has been paid in full by the Contractor for all Work performed and/or materials supplied by it in connection with the Project, and (ii) that all payments for materials, services, and for any other reason in connection with the subcontract or supply contract have been satisfied and that no claims or liens exist against the Subcontractor or supplier in connection therewith; and (C) the written consent of the Contractor's sureties to Final Payment. In the event that the Contractor cannot obtain an affidavit, as required above, from any Subcontractor or supplier, the Contractor shall state in the Contractor's affidavit that no claims or liens exist against such Subcontractor or supplier to the best of the Contractor's knowledge, and that if any appear afterwards, the Contractor shall indemnify and save the CM and the Owner harmless for all costs and expenses, including attorney's fees, on account thereof.

### **ARTICLE 23. ASSIGNMENTS AND SUBCONTRACTS**

- 23.1 The Contractor shall not assign any portion of this Agreement nor subcontract the Work in its entirety without the prior written consent of the CM. Except as may be required under terms of the bonds required by the Contract Documents, no funds or sums of money due or to become due to the Contractor under the Contract Documents may be assigned.



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### ARTICLE 24. MEASUREMENTS

- 24.1 Before ordering material or doing Work which is dependent for proper size or installation upon coordination with building conditions, the Contractor shall verify all dimensions and shall be responsible for the correctness of same. No consideration will be given for any claim based on differences between the actual dimensions and those indicated in the Contract Documents. Any discrepancies between the Contract Documents and the existing conditions shall be referred to the Designer by the CM for adjustment before any Work affected thereby is begun.

### ARTICLE 25. CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

- 25.1 Within thirty (30) days after initial receipt of the Construction Agreement by the Contractor for signatures, the Contractor shall submit to the CM for acceptance a current list of the names of Subcontractors and such other persons and organizations (including those who are to furnish materials or equipment fabricated to a special design) proposed for any and all portions of the Work. The Contractor shall provide this list at this time even if the Contractor was required to submit a list of proposed Subcontractors with the Contractor's bid. The CM shall promptly reply to the Contractor in writing stating whether or not the CM, after due investigation, has objection to any such proposed person or entity or if it needs additional information to evaluate the persons or entities on the list. Failure of the CM to reply within ten (10) days after the Contractor has furnished all required information shall constitute notice of no objection.

The Contractor shall not contract with any such proposed person or entity to which the CM has made reasonable objection. If the CM has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the CM has no reasonable objection. The Contractor shall make no substitution for any Subcontractor, person, or entity previously allowed without first notifying the CM in writing and no substitution may be made if the CM makes a reasonable objection to such substitution.

- 25.2 The Contractor agrees that the terms of the Contract Documents, including all portions thereof, shall apply to all Subcontractors as if they were the Contractor, and that the Subcontractors shall, by means of their subcontracts, be bound by all the terms of the Contract Documents.
- 25.3 Payments to Subcontractors by the Contractor shall be made in accordance with the provisions of N.C. Gen. Stat. §143-134.1.

### ARTICLE 26. USE OF PREMISES

- 26.1 The Contractor shall confine apparatus, the storage of materials, the operations of workers, and the disposal of material to limits indicated by law, ordinances, permits, and directions of the CM, if any.



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- 26.2 The Contractor shall not load or permit any part of the Work to be loaded with a weight that will endanger its safety, intended performance, or configuration.
- 26.3 The Contractor shall enforce all of the CM's instructions, including, but not limited to, those regarding signs, advertisements, fires, and smoking.

### **ARTICLE 27. CUTTING, PATCHING AND FITTING**

- 27.1 The Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and fit it to receive or to be received by Work shown in or which can be reasonably implied from the Contract Documents.

### **ARTICLE 28. DISPUTE RESOLUTION**

- 28.1 The laws of the State of North Carolina shall apply to the interpretation and enforcement of this Agreement. Any and all suits or actions to enforce, interpret, or seek damages with respect to any provision of, or the performance or nonperformance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Wake County, North Carolina, and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions. Appendix A shall be a part of the Contract Documents. Prior to initiating an action under this Article, any party to this Agreement shall initiate the mediation process as provided in Appendix A to these General Conditions.
- 28.2 Any person or firm that expressly or impliedly agrees to perform labor or services or to provide material, supplies, equipment, work, performance or payment bonds, insurance or indemnification for the construction of the Project or the Work shall be deemed a party to this Agreement solely for the purpose of this Article 28. The Contractor, by means of its subcontracts, shall specifically require its Subcontractors to be bound by this Article.

### **ARTICLE 29. TAXES**

- 29.1 The Contractor has included in the Contract Price, and shall pay, all taxes assessed by any authority on the Work or on the labor and materials used therein. The Contractor shall maintain all tax records during the life of the Project and furnish the CM with a complete listing of all taxes paid by taxing authority, invoice number, date, amount, etc. in a form acceptable to the CM and the Owner. The Contractor is required to maintain a file showing taxes paid on the Project for three (3) years after Final Payment or turn said documents over to the Owner for its files.
- 29.2 The following is a list of requirements to be followed by the Contractor in maintaining proper records and reporting the North Carolina Sales and Use Tax and Local Sales and Use Tax. The Contractor shall comply fully with the requirements outlined below, in order that the Owner may recover the amount of the tax permitted under the law.
- a) It shall be the Contractor's responsibility to furnish the CM documentary evidence showing the materials used and sales and use tax paid by the Contractor and by



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each of its Subcontractors. Such evidence shall be transmitted to the CM with each pay request regardless of whether taxes were paid in that period covered by the pay request.

- b) The documentary evidence shall consist of a certified statement by the Contractor and by each of the Contractor's Subcontractors individually, showing total purchases of materials from each separate vendor and total sales and use taxes paid to each vendor. Certified statements must show the invoice number, or numbers, covered, and inclusive dates of such invoices.
- c) Materials used from Contractor's or Subcontractor's warehouse stock shall be shown in a certified statement at warehouse stock prices.
- d) The Contractor shall not be required to certify the Subcontractor's statements.

### **ARTICLE 30. OPERATION OF OWNER'S FACILITIES**

- 30.1 The Contractor agrees that all Work done under the Contract Documents shall be carried on in such a manner so as to ensure the regular and continuous operation of the adjoining or adjacent facilities. The Contractor further agrees that the sequence of operations under the Contract Documents shall be scheduled and carried out so as to ensure said regular and continuous operation. The Contractor shall not close any areas of construction until so authorized by the CM. The Contractor shall control operations to assure the least inconvenience to the public. Under all circumstances, safety shall be the most important consideration.

### **ARTICLE 31. THIRD PARTY BENEFICIARY CLAUSE**

- 31.1 It is specifically agreed between the parties executing the Agreement that, with the specific exception set forth paragraph 7.24 of these General Conditions, and that exception only, the Contract Documents and the provisions therein are not intended to make the public, or any member thereof, a third-party beneficiary of the Agreement, or to authorize anyone not a party to the Contract Documents to maintain a suit for personal injuries or property damage pursuant to the terms of provisions of the Contract Documents.

### **ARTICLE 32. MEASUREMENT OF QUANTITIES**

- 32.1 All Work completed under the Contract Documents shall be measured by the Contractor using United States customary units of measurement. The method of measurement and computations to be used in determination of quantities of material furnished and of Work performed under the Contract Documents shall be those methods set forth in the Contract Documents or, if not specifically set forth therein, the method generally recognized as conforming to good engineering practice.

### **ARTICLE 33. TERMINATION BY THE CM FOR CAUSE**



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- 33.1 If the Contractor fails to begin or complete the Work under the Contract Documents within the time specified, or fails to perform the Work with sufficient labor and equipment or with sufficient materials to insure the prompt completion of said Work, or shall perform the Work unsuitably or shall discontinue the prosecution of the Work for three (3) consecutive days, or if the Contractor shall become insolvent, be declared bankrupt, commit any act of bankruptcy or insolvency, allow any final judgment to stand against the Contractor or its affiliated companies unsatisfied for a period of forty-eight (48) hours, make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the Work in an acceptable manner, the CM may give notice in writing to the Contractor and the Contractor's sureties of such delay, neglect, or default, specifying the same, and if the Contractor within a period of three (3) days after such notice shall not proceed in good faith and with reasonable speed to correct such delay, neglect, or default in accordance with such notice, the CM shall have full power and authority, to the extent permitted by law, without violating the Contract Documents, to take the prosecution of the Work out of the hands of the Contractor, to appropriate or use any or all materials and equipment at the Project as may be suitable and acceptable, and may enter into an agreement for the completion of the Work or pursue such other methods as in the CM's sole discretion and opinion shall be necessary or appropriate for the completion of the Work in an acceptable manner. All costs and charges incurred by the CM in proceeding in accordance with the preceding sentence, including attorney's fees, and all costs incurred by the CM in completing the Work shall be deducted from any amount due or which becomes due the Contractor. If such costs and expenses incurred by the CM shall be less than the sum which would have been payable under Contract Documents if it had been completed by the Contractor, then the Contractor shall be entitled to receive the difference, but if such costs and expenses shall exceed the sum which would have been payable under the Contract Documents, the Contractor and the Contractor's surety or sureties shall be liable to the CM for and shall pay to the CM the amount of such excess.
- 33.2 If the CM terminates the Agreement pursuant to this Article 33 and later it is determined that the Contractor had not substantially failed to perform in accordance with the terms of this Article, then the termination will be considered a termination for convenience under Article 34.

### **ARTICLE 34. TERMINATION OR SUSPENSION BY THE CM FOR CONVENIENCE**

- 34.1 The CM may, without cause, order the Contractor to terminate, suspend, delay, or interrupt the Work in whole or in part for such period of time as the CM may determine.
- 34.2 If the Contractor is subsequently ordered by the CM to resume the Work, any cost or expenses to which the Contractor may be entitled by reason of the suspension, delay, or interruption shall be recovered by means of a Change Order in accordance with Articles 13 and 14 of these General Conditions and the Contractor's Construction Schedule and the Master Schedule shall be adjusted in accordance with Article 13 of these General Conditions.



## GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION – CONSTRUCTION MANAGER AT RISK VERSION

34.3 The CM shall terminate the Work or portion thereof by written notice when the Contractor is prevented from proceeding with the Work as a direct result of an executive order of the President with respect to the prosecution of war or in the interest of national defense.

34.4 In the event of termination by the CM under this Article, the Contractor shall be entitled to receive the reasonable and documented direct costs incurred prior to termination, including the cost of materials purchased for the Work which purchases cannot be canceled or which material cannot reasonably be used by the Contractor on other work, and the cost of closing down the Project in a safe and efficient manner, plus ten percent (10%) thereof for overhead and profit, subject to the following conditions:

- a) When the Contract is terminated before completion of all items of Work, payment shall be made for the actual number of units or items of Work completed at the applicable contract prices, or as mutually agreed for items of Work partially complete. If a mutual agreement cannot be reached, the CM shall have the authority to make such equitable adjustment as it deems warranted and the Final Payment shall be made accordingly.
- b) Reimbursement for organization of any Work and moving equipment to and from the job shall be considered when not otherwise provided for in the Contract Documents where the volume of completed Work is too small to compensate the Contractor for those expenses under unit prices. If a mutual agreement cannot be reached, the CM will have the authority to make such equitable adjustment as it deems warranted and the Final Payment will be made accordingly.
- c) Materials obtained by the Contractor for the Work that have been inspected and accepted by the Designer and that are not incorporated in the Work shall, at the request of the Contractor, be purchased from the Contractor at the Contractor's actual cost as shown by receipted bills and actual costs records at such points of delivery as may be determined by the CM.
- d) No payment shall be made by the CM to the Contractor except as herein above provided. No claim for loss of anticipated profits shall be considered or allowed.
- e) Termination of the Contract shall not relieve the Contractor of its responsibilities for any completed portion of the Work nor shall it relieve its sureties of their obligation for and concerning any just claims arising out of the Work performed.

In the event of termination or suspension by the CM for convenience, the Contractor shall not be entitled to any other compensation, including compensation for lost profit, lost opportunity, or any other direct or consequential cost, loss, or damage.

### **ARTICLE 35. MINORITY BUSINESS ENTERPRISE PROGRAM**

35.1 The Contractor shall at all times comply with the latest edition of the Wake County Minority Business Enterprise Policy. All documentation substantiating compliance with the



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requirements of this program shall be delivered to the CM as stipulated in the Contract Documents. A copy of the Wake County Minority Business Enterprise Policy is included in the Project Manual.

### **ARTICLE 36. GENERAL**

- 36.1 If any provision of the Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.
- 36.2 The titles to Articles herein are for convenience only, are not substantive parts of the General Conditions, and are not to be considered in interpreting the Contract Documents.

END OF GENERAL CONDITIONS OF THE  
CONTRACT FOR CONSTRUCTION