

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** July 20, 2016

**SUBJECT:** Construction Manager at Risk Contract

**PRESENTER:** John Mitchell, Business and Community Development Director

**ATTACHMENTS:** 1. A133-2009 Standard Form of Agreement between Owner and  
Construction Manager as Constructor (GMP-1)  
2. A201-2007 General Conditions of Contract for Construction

### **SUMMARY OF REQUEST:**

The Board of Commissioners approved selection of Beverly Grant/Barnhill Construction as the Construction Manager at Risk for the Innovative High School project at their April 20<sup>th</sup>, 2016 meeting.

Following the construction manager at risk process, Beverly Grant/Barnhill is preparing to begin construction on the project. The attached contracts formalize the agreement between Henderson County and Beverly Grant/Barnhill Construction.

The construction manager at risk process includes a Guaranteed Maximum Price (GMP). The final GMP will be determined by the two attachments to be added to the Construction Manager at Risk Contract. The final GMP will be a combination of bids accepted for steel (GMP-1) and total building (GMP-2).

### **BOARD ACTION REQUESTED:**

Accept A133-2009 Standard Form of Agreement between Owner and Construction Manager as Constructor (GMP-1) and accept A201-2007 General Conditions of Contract for Construction.

### **Suggested Motion:**

*I move that the Board of Commissioners accept the contracts with Beverly Grant Barnhill Construction*



July 14, 2016

Henderson County  
1 Historic Courthouse Square  
Suite 5  
Hendersonville, NC 28792

Attn: Mr. John Mitchell

Re: Innovative High School

Dear Mr. Mitchell,

Please find attached the GMP#1 submittal from the Construction Manager, Beverly Grant/Barnhill. This initial GMP was for the early steel package and will allow us to procure the steel in a timely manner to facilitate completion within the targeted schedule.

In addition, attached is our summary of the total project budget, categorizing all components of the project necessary for completion. Should you need further assistance regarding this matter, please do not hesitate to contact me.

Sincerely,

CLARK NEXSEN, INC

Chadwick S. Roberson, AIA LEED BD+C  
Principal





July 13, 2016

Mr. David Berry  
Capital Projects Construction Manager  
Henderson County  
100 North King Street  
Hendersonville, NC 28792

Re: **Innovative High School**  
**Guaranteed Maximum Price #1 – Early Structural Steel Package**

Dear David,

Beverly-Grant / Barnhill, a 50/50 Joint Venture submits the following Guaranteed Maximum Price #1 Proposal (Early Structural Steel Package) for the Innovative High School. The GMP #1 proposal including Trade Contractors bid cost, General Conditions, CM Fee, CM Contingency, and Allowances is \$1,413, 777.00

With a Construction budget of \$13,000,000, the current 60% Construction Design Estimate shows a \$170,259 overage variance. Through the value management process, the project Team has identified approximately \$330,000 of cost savings without removing any program.

We look forward to working with Henderson County on this important project. Please call should you have any comments or questions in regards to the Guaranteed Maximum Price #1.

Yours truly,

Beverly-Grant / Barnhill, a 50/50 Joint Venture

Gary C. Webb  
Project Executive

Cc: File  
Mr. Chad Roberson – Principal, Clark Nexsen  
Mr. Marty Moser – Senior Vice President, Barnhill Contracting Company  
Mr. Rick Grant – President, Beverly-Grant, Inc.  
Mr. Chris Smith – Construction Manager, Beverly-Grant, Inc.  
Mr. Danny Staton – Senior Preconstruction Manager, Barnhill Contracting Company

# **Early Steel Package BID TAB SUMMARY - 7/13/16** **Henderson County - Innovation HS**



EXHIBIT A - Guaranteed Maximum Price Cost Breakdown

BP	Description	Bid Amount	Bidder
BP100	General Trades: Labor & Equipment	N/A	Bids at a later date.
BP105	Final Cleaning	N/A	Bids at a later date.
BP390	Turnkey Concrete	N/A	Bids at a later date.
BP400	Turnkey Masonry	N/A	Bids at a later date.
BP500	Turnkey Structural & Misc. Steel	\$1,076,349	Universal Steel
BP550	Misc. Metals / Stairs /Glass Rails	N/A	Bids at a later date.
BP640	Architectural Woodwork	N/A	Bids at a later date.
BP740	Roofing	N/A	Bids at a later date.
BP750	Metal Wall Panels	N/A	Bids at a later date.
BP790	Caulking & Waterproofing	N/A	Bids at a later date.
BP800	Doors/Frames/Hardware Materials	N/A	Bids at a later date.
BP836	Overhead Doors	N/A	Bids at a later date.
BP840	Glazing/Curtain-wall/Storefronts	N/A	Bids at a later date.
BP925	Metal Studs/Drywall/Insulation	N/A	Bids at a later date.
BP930	Hard Tile	N/A	Bids at a later date.
BP960	Carpet/Resilient/Base	N/A	Bids at a later date.
BP980	Acoustical Ceiling Systems	N/A	Bids at a later date.
BP985	Acoustical Wall Treatments	N/A	Bids at a later date.
BP990	Painting and Wall Protection	N/A	Bids at a later date.
BP1005	Specialties, Accessories, Div. 10	N/A	Bids at a later date.
BP1010	Identifying Devices	N/A	Bids at a later date.
BP1015	Markerboards	N/A	Bids at a later date.
BP1020	Architectural Louvers	N/A	Bids at a later date.
BP1050	Lockers	N/A	Bids at a later date.
BP1053	Aluminum Canopies	N/A	Bids at a later date.
BP1140	Food Service Equipment	N/A	Bids at a later date.
BP1220	Window Treatments	N/A	Bids at a later date.
BP1420	Elevators	N/A	Bids at a later date.
BP2100	Fire Protection	N/A	Bids at a later date.
BP2200	Plumbing	N/A	Bids at a later date.
BP2300	HVAC	N/A	Bids at a later date.
BP2305	HVAC Test & Balance	N/A	Bids at a later date.
BP2600	Electrical & Fire Alarm	N/A	Bids at a later date.
BP2700	Telecommunications	N/A	Bids at a later date.
BP3100	Earthwork	N/A	Bids at a later date.
BP3200	Asphalt Paving / Curb / Gutter	N/A	Bids at a later date.
BP3213	Concrete Paving and Sidewalks	N/A	Bids at a later date.
BP3290	Landscaping	N/A	Bids at a later date.
BP3300	Site Utilities	N/A	Bids at a later date.
BP3400	Turn Key Sitework	N/A	Bids at a later date.
	Allowances	\$50,000	Structural Steel
1.20%	Subcontractor Bonds (Subguard)	\$13,516	
VE	Accepted VE	\$0	
	<b>SUBTOTAL</b>	\$1,139,865	
2.00%	Contractor Contingency	\$22,797	
	<b>SUBTOTAL</b>	\$1,162,662	
3.75%	CM Fee	\$43,600	
	<b>SUBTOTAL</b>	\$1,206,262	
LS	General Conditions	\$179,947	August 2016 through October 2016
1.95%	Insurances & Bonds	\$27,569	
	<b>GMP TOTAL</b>	<b>\$1,413,777</b>	



## BID TABULATION RECORD



**Certification By:** Aaron Pinson

### Bid Package Description: Structural Steel and Erection

[illegible]

Total Project Budget Reconciliation for GMP#1

**Hard Costs + Estimated + Contingency** 3/17/2015

	Construction Costs	Notes	
GMP #1- Early Steel Package	\$ 1,413,777.00	Procured includes Contingency and allowances	
GMP #2- Remainder of the building bid date 9/20/16	\$ 11,880,275.00	Estimated from 60% construction documents	
Value Management to date	\$ (330,000.00)	Identified Value Management to date	
Total Hard Costs	\$ 12,964,052.00		
Owner Construction Contingency	\$ 598,000.00		
Total procured, estimated, & contingency	\$ 13,562,052.00		
<b>Soft Costs</b>			
A/E fees	\$ 783,250.00		
CM pre-con	\$ 94,000.00		
Special inspections	\$ 100,000.00	estimated	
Survey	\$ 20,000.00		
Permitting	\$ 100,000.00	Estimated	
FFE Budget	\$ 700,000.00	Estimated	
Technology Budget	\$ 325,000.00	Estimated	
Total soft costs	\$ 2,122,250.00		
<b>Grand Total Project Cost</b>	<b>\$ 15,684,302.00</b>		
Approved budget from Henderson County	\$ 15,725,000.00		

**AIA<sup>®</sup>**

# Document A133<sup>™</sup> – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the Thirteenth day of July in the year Two Thousand Sixteen  
(In words, indicate day, month and year.)

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

Henderson County  
1 Historic Courthouse Square  
Suite 5  
Hendersonville, NC 28792

and the Construction Manager:  
Beverly-Grant / Barnhill, a 50/50 Joint Venture  
80 Peachtree Road  
Suite 201  
Asheville, NC 28803

for the following Project:  
Innovative High School  
180 W. Campus Drive  
Flat Rock, NC 28731

The Architect:  
Clark Nexsen, Inc.  
301 College Street, Suite 300  
Asheville, NC 28801

The Owner's Designated Representative:  
(Name, address and other information)

Mr. John Mitchell  
100 North King Street  
Hendersonville, NC 28792

The Construction Manager's Designated Representative: (Name, address and other information)

Mr. J. Chris Smith  
80 Peachtree Road  
Suite 201  
Asheville, NC 28803

The Architect's Designated Representative:  
(Name, address and other information)

Mr. Chad Roberson, AIA  
301 College Street  
Suite 300  
Asheville, NC 28801

### **ADDITIONS AND DELETIONS:**

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

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

AIA Document A201<sup>™</sup>–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

The Owner and Construction Manager agree as follows.



Init.

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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager. "As amended (hereafter "A201-2007")" after "General Conditions of the Contract for Construction" and before "shall apply only as specifically . . . ."

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. Under no circumstances may the date of Substantial Completion of the Project be later than 15<sup>th</sup> August 2017. As used herein, "Substantial Completion" occurs when both the Architect certifies that the Owner can occupy or utilize the Project and a certificate of occupancy has been issued. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price and except that the date of Substantial Completion may in no circumstance be later than 15<sup>th</sup> August 2017. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

### § 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion, which shall in no event be later than 15<sup>th</sup> August 2017, upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- .6 A statement of liquidated damages, to be included in all contracts and subcontracts entered by the Construction Manager, such that in the event the Project has not achieved Substantial Completion by 15<sup>th</sup> August 2017, liquidated damages as stated in Section 2.6, below, for each day or portion thereof after 1

December 2015 until the Project achieves Substantial Completion, payable to the Owner.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Construction Manager's Construction Contingency shall be used to expedite the work, supplement any additional unforeseen general conditions cost, correct deficient work, address scheduling and coordination problems, correct scope gaps in the bidding of the project, correct code, regulatory and other items identified by the Owner in writing to the Construction Manager prior to bidding the project, and any issues that are the fault of the Construction Manager or its trade subcontractors subject to the terms of Article 6 Cost of the Work. The Construction Manager's use of the Construction Contingency fund shall be documented in writing by the Construction Manager.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts bid and awarded pursuant to North Carolina law, and specifically N.C. Gen. Stat. §143-128.1.

The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.



§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007. Such schedule shall show Substantial Completion of the Work not later than 15<sup>th</sup> August 2017.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

## § 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

## § 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.6 The Construction Manager acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time, and that the Owner has entered into, or will enter into, binding agreements with third parties based on the Contractor's achieving Substantial Completion of the Work by not later than 15<sup>th</sup> August 2017. The Construction Manager further acknowledges and agrees that if the Construction Manager fails to complete substantially or cause the Substantial Completion of any portion of the Work by 15<sup>th</sup> August 2017, the Owner will **sustain** damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the Owner and the Construction Manager agree as set forth in this Section 2.6.

§2.6.1 If the Construction Manager fails to achieve Substantial Completion of the Work by 15<sup>th</sup> August 2017, the Owner shall be entitled to retain or recover from the Construction Manager, as liquidated damages and not as a penalty, the following *per day* amounts commencing the 15<sup>th</sup> August 2017 and



continuing each day until the date the Construction Manager achieves Substantial Completion of the entire Work. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the work:

**TOTAL per day liquidated damages**

**\$\_TBD\_**

§2.6.2 The Owner may deduct liquidated damages described in Section 2.6.1 from any unpaid amounts then or thereafter due the Construction Manager under this Contract. Any liquidated damages not so deducted from any unpaid amounts due the Construction Manager shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at the legal rate.

### **ARTICLE 3 OWNER'S RESPONSIBILITIES**

#### **§ 3.1 Information and Services Required of the Owner**

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

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

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests,

evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties, and responsibilities as described in AIA Document B133™–2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

The Construction Manager shall be compensated for a total Preconstruction Fee of \$92,550.00 (*ninety two thousand, five hundred and fifty dollars*)

§ 4.1.3 The Preconstruction Phase services covered by this Agreement have been.

§ 4.1.4 Compensation is based on a lump sum amount only.

### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

Zero % 0

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

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

Three and three quarter percent (3.75%) of the total GMP.

**§ 5.1.2** The method of adjustment of the Construction Manager's Fee for changes in the Work:

Changes will be adjusted at the same rate of the Construction Manager's Fee

*(Table deleted)*

*(Paragraphs deleted)*

**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

At the conclusion of the construction phase, the unused portion of the Construction Manager's Construction Contingency may be considered available for a 50 % CM to 50 % Owner split based on Owner's evaluation of the performance on the contract. The distribution of savings in the Construction Manager's Construction Contingency fund shall be considered as a performance incentive only if the project completes within the specified construction duration established in the GMP.

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

**§ 5.3.5** If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean all amounts paid by the Owner to the Construction Manager for construction and post-construction phase basic services provided by the Construction Manager and payment to all separate Subcontractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

#### § 6.2.2

Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site

*(Paragraphs deleted)*

and when stationed at the Construction Manager's office as indicated and defined in the Construction Manager's General Conditions presented with the GMP.

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.2.6 Actual Construction Manager billing rates for Construction Manager's Labor will include all labor burdens, benefits, taxes, insurances, IT network support, etc and will be established in the GMP:

§ 6.2.7 Actual Construction Manager billing rates for insurances and bonds:

- |                            |                             |
|----------------------------|-----------------------------|
| a. General Liability Ins.  | 0.95% of GMP total          |
| b. Perform. & Payment Bond | 1% of GMP total             |
| c. Subguard Bonds          | 1.20 % of subcontract total |

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.



## **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

## **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution



of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 6.6.9** Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### **§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### **§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in

the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

#### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 7.1.3** Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

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

**§ 7.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of

the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager’s Fee, less retainage calculated as the maximum allowable retainage pursuant to N.C. Gen. Stat. §143-134.1(b1). The Construction Manager’s Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage calculated as the maximum allowable retainage pursuant to N.C. Gen. Stat. §143-134.1(b1) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

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

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

§ 7.1.10 In taking action on the Construction Manager’s Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum less any liquidated damages, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

*(Table deleted)*

*(Paragraph deleted)*

## ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. Any Claim or other dispute between the Owner and Construction Manager shall be subject to dispute resolution pursuant to the provisions of N.C. Gen. Stat. §143-128.1(c) and 1 N.C.A.C. 30H.0400 *et seq.* If any only if such dispute resolution process is exhausted without resolution, any . . .

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

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

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐

*(Paragraphs deleted)*

☒ Other: *Step 1 is mandatory meeting, Step 2 is mediation, Step 3 is litigation,*

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(Paragraphs deleted)*

Init.



## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the



Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

### § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### § 11.5 Other provisions:

## ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
  - .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
  - .5 Other documents:
    - a Construction Manager at Risk Fee Proposal, dated March 14, 2016.
    - b AIA A201—2007 Supplementary General Conditions dated July 14, 2016.

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

OWNER

*(Printed name and title)*

CONSTRUCTION MANAGER

Gary C. Webb

*Vice President, Barnhill Contracting Company*

CONSTRUCTION MANAGER

J. Chris Smith

*Vice President, Beverly-Grant, Inc.*

Init.

/

# Additions and Deletions Report for AIA<sup>®</sup> Document A133<sup>™</sup> – 2009

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:41:27 on 07/15/2016.

## PAGE 1

**AGREEMENT** made as of the Thirteenth day of July in the year Two Thousand Sixteen

...

Henderson County  
1 Historic Courthouse Square  
Suite 5  
Hendersonville, NC 28792

~~(Name, legal status and address)~~ Beverly-Grant / Barnhill, a 50/50 Joint Venture  
80 Peachtree Road  
Suite 201  
Asheville, NC 28803

...

~~(Name and address or location)~~ Innovative High School  
180 W. Campus Drive  
Flat Rock, NC 28731

...

~~(Name, legal status and address)~~ Clark Nexsen, Inc.  
301 College Street, Suite 300  
Asheville, NC 28801

...

Mr. John Mitchell  
100 North King Street  
Hendersonville, NC 28792

The Construction Manager's Designated ~~Representative:~~  
~~(Name, Representative: (Name, address and other information))~~  
Mr. J. Chris Smith  
80 Peachtree Road  
Suite 201  
Asheville, NC 28803

...

Mr. Chad Roberson, AIA

PAGE 3

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager. "As amended (hereafter "A201-2007")" after "General Conditions of the Contract for Construction" and before "shall apply only as specifically . . . ."

PAGE 4

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. Under no circumstances may the date of Substantial Completion of the Project be later than 15<sup>th</sup> August 2017. As used herein, "Substantial Completion" occurs when both the Architect certifies that the Owner can occupy or utilize the Project and a certificate of occupancy has been issued. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

PAGE 5

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. ~~Price and except that the date of Substantial Completion may in no circumstance be later than 15<sup>th</sup> August 2017.~~ The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

- .4 The anticipated date of Substantial ~~Completion~~ Completion, which shall in no event be later than 15<sup>th</sup> August 2017, upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- .6 A statement of liquidated damages, to be included in all contracts and subcontracts entered by the Construction Manager, such that in the event the Project has not achieved Substantial Completion by 15<sup>th</sup> August 2017, liquidated damages as stated in Section 2.6, below, for each day or portion thereof after 1 December 2015 until the Project achieves Substantial Completion, payable to the Owner.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Construction Manager's Construction Contingency shall be used to expedite the work, supplement any additional unforeseen general conditions cost, correct deficient work, address scheduling and coordination problems, correct scope gaps in the bidding of the project, correct code, regulatory and other items identified by the Owner in writing to the Construction Manager prior to bidding the project, and any issues that are the fault of the Construction Manager or

its trade subcontractors subject to the terms of Article 6 Cost of the Work. The Construction Manager's use of the Construction Contingency fund shall be documented in writing by the Construction Manager.

## PAGE 6

**§ 2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts ~~or by other appropriate agreements with the Construction Manager.~~ bid and awarded pursuant to North Carolina law, and specifically N.C. Gen. Stat. §143-128.1.

## PAGE 7

**§ 2.3.2.6** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007. Such schedule shall show Substantial Completion of the Work not later than 15<sup>th</sup> August 2017.

...

**§ 2.6** The Construction Manager acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time, and that the Owner has entered into, or will enter into, binding agreements with third parties based on the Contractor's achieving Substantial Completion of the Work by not later than 15<sup>th</sup> August 2017. The Construction Manager further acknowledges and agrees that if the Construction Manager fails to complete substantially or cause the Substantial Completion of any portion of the Work by 15<sup>th</sup> August 2017, the Owner will sustain damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the Owner and the Construction Manager agree as set forth in this Section 2.6.

**§2.6.1** If the Construction Manager fails to achieve Substantial Completion of the Work by 15<sup>th</sup> August 2017, the Owner shall be entitled to retain or recover from the Construction Manager, as liquidated damages and not as a penalty, the following per day amounts commencing the 15<sup>th</sup> August 2017 and continuing each day until the date the Construction Manager achieves Substantial Completion of the entire Work. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the work:

<b>TOTAL per day liquidated damages</b>	<b>\$ TBD</b>
---	---------------

**§2.6.2** The Owner may deduct liquidated damages described in Section 2.6.1 from any unpaid amounts then or thereafter due the Construction Manager under this Contract. Any liquidated damages not so deducted from any unpaid amounts due the Construction Manager shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at the legal rate.

## PAGE 9

The Construction Manager shall be compensated for a total Preconstruction Fee of \$92,550.00 (ninety two thousand, five hundred and fifty dollars)

**§ 4.1.3** ~~If the~~ The Preconstruction Phase services covered by this Agreement have ~~not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted. been.~~

**§ 4.1.4** ~~Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions, is based on a lump sum amount only.~~



...

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

Zero % 0

#### PAGE 10

Three and three quarter percent (3.75%) of the total GMP.

...

Changes will be adjusted at the same rate of the Construction Manager's Fee

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

§ 5.1.4 ~~Rental rates for Construction Manager-owned equipment shall not exceed \_\_\_\_\_ percent (\_\_\_\_%) of the standard rate paid at the place of the Project.~~

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

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

...

At the conclusion of the construction phase, the unused portion of the Construction Manager's Construction Contingency may be considered available for a 50 % CM to 50 % Owner split based on Owner's evaluation of the performance on the contract. The distribution of savings in the Construction Manager's Construction Contingency fund shall be considered as a performance incentive only if the project completes within the specified construction duration established in the GMP.

#### PAGE 11

§ 6.1.1 ~~The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. all amounts paid by the Owner to the Construction Manager for construction and post-construction phase basic services provided by the Construction Manager and payment to all separate Subcontractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.~~

...

~~Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.~~

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*  
and when stationed at the Construction Manager's office as indicated and defined in the Construction Manager's General Conditions presented with the GMP.

...

**§ 6.2.6** Actual Construction Manager billing rates for Construction Manager's Labor will include all labor burdens, benefits, taxes, insurances, IT network support, etc and will be established in the GMP:

**§ 6.2.7** Actual Construction Manager billing rates for insurances and bonds:

- |                            |                             |
|----------------------------|-----------------------------|
| a. General Liability Ins.  | 0.95% of GMP total          |
| b. Perform. & Payment Bond | 1% of GMP total             |
| c. Subguard Bonds          | 1.20 % of subcontract total |

#### PAGE 14

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

month.

**§ 7.1.3** Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

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

#### PAGE 15

- .3** Add the Construction Manager's Fee, less retainage of ~~percent ( — % )~~, calculated as the maximum allowable retainage pursuant to N.C. Gen. Stat. §143-134.1(b1). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4** Subtract retainage of ~~percent ( — % )~~ calculated as the maximum allowable retainage pursuant to N.C. Gen. Stat. §143-134.1(b1) from that portion of the Work that the Construction Manager self-performs;

...

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract ~~Sum, Sum less any liquidated damages,~~ shall be made by the Owner to the Construction Manager when

...

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~

Payment.

#### PAGE 16

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

**Type of Insurance or Bond**

**Limit of Liability or Bond Amount (\$0.00)**

§ 9.1 ~~Any~~ Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. ~~However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.~~ Any Claim or other dispute between the Owner and Construction Manager shall be subject to dispute resolution pursuant to the provisions of N.C. Gen. Stat. §143-128.1(c) and 1 N.C.A.C. 30H.0400 et seq. If any only if such dispute resolution process is exhausted without resolution, any . . .

...

☐ — Litigation in a court of competent jurisdiction

☐ — Other: (Specify)

☒ — Other: Step 1 is mandatory meeting, Step 2 is mediation, Step 3 is litigation.

...

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

**PAGE 18**

~~(List other documents, if any, forming part of the Agreement.)~~ a Construction Manager at Risk Fee Proposal, dated March 14, 2016.  
b AIA A201—2007 Supplementary General Conditions dated July 14, 2016.

**PAGE 19**

OWNER (Signature)

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Gary C. Webb

(Printed name and title) Vice President, Barnhill Contracting Company

CONSTRUCTION MANAGER

J. Chris Smith

Vice President, Beverly-Grant, Inc.



## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:41:27 on 07/15/2016 under Order No. 6537178294\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*





**AIA®**

# Document A201™ – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Innovative High School  
180 W. Campus Drive  
Flat Rock, NC 28731

### THE OWNER:

*(Name, legal status and address)*

Henderson County  
100 North King Street  
Hendersonville, NC 28792

### THE ARCHITECT:

*(Name, legal status and address)*

Clark Nexsen  
301 College Street, Suite 300  
Asheville, NC 28801

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### ADDITIONS AND DELETIONS:

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

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

Init.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

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

#### **§ 1.1.2 THE CONTRACT**

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

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

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

#### **§ 1.1.8 INITIAL DECISION MAKER**

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

#### **§ 1.1.9 DEFINITIONS**

**§ 1.1.9.1** As used in this document, the term "Contractor" shall in all instances be replaced with "Construction Manager".

**§ 1.1.9.2** As used in this document, the terms "knowledge", "recognize" and "discover", their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Construction Manager, shall be interpreted to mean that which the Construction Manager knows (or should know),



recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contract familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

## **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

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

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

**§ 1.2.4** In the event of discrepancies or disagreements between Contract Documents, the order of precedence shall be as follows:

1. Agreement between Owner and Construction Manager
2. Modifications defined in Section 1.1.1
3. Addenda
4. Supplementary Conditions
5. General Conditions
6. Specifications
7. Drawings
8. As between schedules and information given on the drawings, the schedules shall govern.
9. As between schedules, information given on the drawings, and scaled measurements, the measurements shall govern.
10. As between large scale drawings and small scale drawings, the larger scale shall govern.

## **§ 1.3 CAPITALIZATION**

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

## **§ 1.4 INTERPRETATION**

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

## **§ 1.5**

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

The Contract Documents are the property of the Owner which may be used by the Contractor, Subcontractors, materials and equipment suppliers for the Project only, and not for other projects of work.

*(Paragraphs deleted)*

*(Paragraphs deleted)*

## **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is a body corporate and politic of the State of North Carolina, and may act only through a majority of its Board of Commissioners ("the Board").

The Board, by majority vote, is the only representative of the Owner having the power to enter into or amend the Contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, or to agree to an extension to the dates of Substantial or Final Completion. The Board will act when requested in writing to do so as soon as reasonably possible to avoid undue delays. The Board will designate an authorized representative to act on its behalf for day-to-day operations under the Contract. The Owner's authorized representatives have the authority to act on behalf of the Board in all matters other than those reserved to the Board above, except he has the authority to approve changes to the Work where such changes do not exceed \$25,000.00. Any such change shall be confirmed in writing between the Contractor and the Owner's Representative, and notice of such approved changes shall be given to the Board at its next regular meeting. The Architect does not have such authority except as otherwise provided in the Contract Documents. Neither the Architect nor the Contractor may rely upon direction of any employee of the Owner who has not been designated in writing by the Superintendent or the Board; the Owner shall not be financially responsible for actions taken by the Architect or the Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 It shall be distinctly understood that no mechanic, Contractor, Subcontractor, material or equipment supplier, and/or supplier of labor services, shall ever in any manner have, claim, or acquire any lien upon the buildings, equipment, or furnishings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of its improvements are to be erected, built or situated, such property belonging to a body corporate and politic of the State of North Carolina.

§ 2.1.3 The Owner shall require the Contractor, the Subcontractors, the Architect and the Architect's consultants to meet periodically at mutually-agreed-upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication and timely responses among the participants in the performance of the Work.

§ 2.1.4 The Owner may require that the Contractor use and/or respond to certain Owner furnished forms or inquiries regarding the status of the Work during the course of the Project. From time to time, there may be future revisions, changes, additions, or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 2.1.5 The Contractor stipulates and agrees that the Owner has no duty to discover any design defects, errors, or omissions whether in the Drawings, Plans, Specifications and other Construction Documents. The Owner will, however, notify the Contractor and the Architect of design defects, errors or omissions of which the Owner's Representative or the Board have actual knowledge. By entering into the Contract Documents or any Agreement with any Architect, the Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Construction Documents.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** The Contractor shall establish all lines and levels required to properly execute the Work, and shall pay for all costs to establish them, and shall be responsible for their maintenance and accuracy. The Contractor shall coordinate the Work with the Architect regarding the recommendations set forth in any Owner furnished information, particularly where excavation of unsuitable soils and replacement of fill materials are described, if any, which may be required for the proper and complete installation of the Work.

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

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

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

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

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

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

### **§2.5 EXTENT OF OWNER RIGHTS**

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

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

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

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

## § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 The Contractor represents and warrants by execution of the Agreement that he has carefully examined the Project Manual and Addenda, the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports and the site of the Work, and that, from his own investigations, he has satisfied himself as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of machinery and equipment and other facilities needed for the performance of the Work, the character, quality, quantity, and availability of labor and Subcontractors required for the Work, the character, quality and quantity of professional services required for the Work, the character, quality, quantity and availability of materials, machinery, equipment and furnishings required for the Work, and all other matters and things which may in any way affect the Work or its performance. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify the Architect and Owner in writing, and the Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of Work.

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

§ 3.2.3 Neither the Owner nor the Contractor is required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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

§ 3.2.5 Prior to performing any Work, the Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to the Contractor. In addition, the Contractor shall review appropriate hazardous material surveys for the Project, and shall notify all Subcontractors and Sub-Subcontractors of the necessity to review such surveys. The Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials or other hazardous materials that are clearly identified and located in hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades, and elevations, existing improvements, and general suitability of existing conditions at the Project site.



§ 3.2.6 The Contractor shall arrange meetings prior to commencement of the Work of all major subcontractors to allow the Subcontractors to demonstrate an understanding of the Work and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. Each major Subcontractor shall review the Project Manual and the Construction Documents and shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures per Article 15.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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

§ 3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and Subcontractors. The Contractor shall develop and maintain a schedule of critical path construction activities for the Work. This critical path schedule shall be updated at least bi-monthly and presented to the Owner and Architect upon request.

§ 3.3.5 The Contractor shall review Subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity, including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances and manufacturers' instructions which shall include the obligation to provide for the safety of their employees, other persons, and property and the requirements to maintain a work environment free of recognized hazards.

### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor eligible to work in accordance with state and federal law, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, the Contractor shall verify that all dimensions specified in the Drawings, Specifications and other Construction Documents are consistent with all actual dimensions in the field. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies exist and the Architect was not notified beforehand, then costs to correct and/or replace ordered materials shall be borne by the Contractor. This subsection does not relieve the Architect of any contractual duties owed to the Owner.



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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Architect and Owner reserve the right to require that the Contractor remove from the Project any employee whose actions are deemed by either of them to be detrimental to the Project.

§ 3.4.4 Subcontractors will not be permitted to establish their own normal working hours (such as 10 hours per day, four days per week) except with the written consent of the Contractor and the Architect and without additional compensation.

§ 3.4.5 Including, but not limited to, the specific requirements of Section 3.3.5 and Article 10, the Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal, state and local laws, regulations, guidelines, and ordinances pertaining to safety of persons and property applicable to the Work.

### § 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. The Contractor further warrants and guarantees that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction projects similar to the Project, except to the extent the Contract Documents expressly specify a higher standard, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb, patterns shall be uniform, and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, systems, machinery, equipment or components not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 If, within any warranty period, repairs or changes are required in connection with warranted work, the Contractor shall promptly, upon receipt of notice from the Owner and without expense to the Owner:

1. Place in satisfactory condition in every particular all of such warranted Work and correct all defects therein;
2. Make good all damages to the buildings, sites, or equipment and contents, thereof, which, in the opinion of the Architect, are the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the Contract Documents;
3. Make good any work, materials, equipment, and contents of said buildings or sites which may have been disturbed in fulfilling any such warranty; and
4. If compliance with 1., 2., 3. are not completed in a reasonable period of time, then, the Contractor shall reimburse the Owner for all related costs and expenses, including attorneys' fees and fees of experts hired to investigate a warranty claim.

In any case wherein fulfilling the requirements of the Contract Documents or any warranty embraced in or required thereby, the Contractor disturbs any Work warranted under another Contract, it shall restore such disturbed Work to a condition satisfactory to the Owner, and it shall warrant such restored Work to the same extent as it was warranted under such other Contract.

If the Contractor, after notice, fails to proceed within seven (14) days to comply with the terms of this warranty, the Owner may have the defects corrected, and the Contractor and its surety shall be liable for all reasonable costs and expenses incurred.

The Contractor shall defend and save the Owner harmless against any claim, demand, loss or damage arising from any breach of this warranty by the Contractor.

This Section 3.5.2 is in addition to, and not in limitation of; any other warranties, rights, or remedies to which the Owner may be entitled.

§ 3.5.3 All specified express warranties required by the Contract Documents on workmanship, equipment, machinery, materials, systems or components shall be submitted in writing to the Architect for delivery to the Owner no later than the date of Final Completion and further agrees to perform the Work in such manner so as to preserve any and all such manufacturers, suppliers and installers' warranties. Unless specified otherwise, all warranties shall run from the date of Final Completion for a period of one (1) year. The Contractor will present to the Owner an Alternate bid to include an additional one (1) year workmanship warranty specific to the Roofing system. Warranties under Section 3.5. 1 are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.

§ 3.5.4 The Contractor shall include in the bid documents an Add Alternate Bid to further guarantee for a period of twenty-four (24) months that the building shall be watertight and leak free at every point and in every area. If the Add Alternate Bid cost is accepted by the Owner, the Contractor shall, immediately upon notification by the Owner of water penetration, determine the source of water penetration, and at Contractor's own expense, do any Work necessary to make the building watertight. Contractor shall also, at its own expense, repair or replace any other damaged material to return the building to its original accepted condition. The twenty-four (24) month period shall run from the later of the Contractor's last act or omission giving rise to a cause of action under this warranty or Substantial Completion of the Project.

§ 3.5.5 Upon written notice from the Owner or the Architect, the Contractor shall promptly remedy defects in the Work as covered by applicable warranties. If the Contractor does not respond to the written notice within fourteen (14) days of Contractor's receipt of a written notice, either by beginning corrective work or notifying the Owner in writing regarding when corrective work will begin, the Owner may take measures to correct the Work and the Contractor will be obligated to reimburse the Owner's costs including reasonable consultant, engineering and legal fees. The provisions of this section shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

§ 3.5.6 The warranties of the Contractor provided in Section 3.5 shall in no way limit or abridge the warranties of the manufacturers, suppliers, and installers of materials, machinery, equipment, systems or components which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. The Contractor shall take no action or fail to act in any way which results in the denial, termination, or expiration of such third party warranties or which otherwise results in prejudice to the rights of the Owner under such warranties. The Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the suppliers, manufacturers, and installers of such materials, machinery, systems, and equipment whereby the Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

### § 3.6 TAXES

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

§ 3.6.1 The Contractor shall submit with its monthly Certification and Application for Payment a notarized certification of the sales tax payments made under the Contract and payments on its subcontracts made for all taxable materials installed and stored at the Project for the pay period.

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. If the Contractor disposes of or is required to dispose of materials from demolition, construction waste, excess dirt, rock and other materials, the Contractor shall pay all fees associated with disposal. All connection charges, assessments or inspection fees as may be imposed by any agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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

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

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

§ 3.7.6 In connection with the General Building, Plumbing, HVAC and Electrical Contracts, the Contractor shall provide the Owner through the Architect copies of inspection reports performed by the local building inspection department.

### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 SUPERINTENDENT

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

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 In the event that the Contractor's superintendent(s) repeatedly fail to perform their functions in keeping with the standards commonly observed in the construction industry or repeatedly fail to cooperate and coordinate the Contractor's Work in conformance with the Contract Documents, then the Owner or Architect shall have the right to request the superintendent's removal in writing. The Contractor agrees that, upon receipt of written notice, the Contractor shall remove the superintendent from the Project within two (2) weeks and provide a suitable replacement.

§ 3.9.5 Contractor's resident superintendent shall provide the Owner's Representative and Architect with the Contractor's written daily field reports by email each working day.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall furnish the Owner and the Architect with copies of the schedule, all revisions to the schedule, and periodic (at least monthly) reports of actual performance of the Work in relation to the scheduled performance. The schedule must correlate with the schedule of values submitted by the Contractor.

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



The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

**§ 3.10.4** The Contractor shall keep informed of the progress and the detail of the Work of the Subcontractors and shall notify the Architect and Owner immediately of any failure of any Subcontractor to maintain the progress of the Work or of defective Work on the part of any Subcontractor. Failure of the Contractor to notify the Architect and Owner of schedule delays or defective Work shall be construed as acceptance by the Contractor of the status of the Work and as being satisfactory for the proper coordination of the Subcontractors' Work.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order. These documents shall be marked by Contractor on an on-going basis to record (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; and (iv) such other information as either the Owner or Architect may reasonably request. In addition, Contractor shall maintain one record copy of the approved shop drawings, field test records, inspection certificates or records, manufacturers' certificates, product data, samples and similar required submittals. The foregoing documents shall be available to the Architect and the Owner at all times and be delivered to the Architect following the completion of construction to enable the Architect to produce a set of "Record Drawings" showing the as-built condition of the improvements and any changes to existing conditions. Final payment and any retainage shall not be due and payable to the Contractor until after the foregoing documents have been delivered to the Architect.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

**§ 3.12.2** Product Data consists of written, printed, drawn, sound recording, video recording, computer generated, electronic or other form of communication created by manufacturers, suppliers, testing organizations, standards organizations, manufacturer and supplier associations and trade groups, and similar creators of such communications, regarding materials, equipment, machinery, systems, processes and the components thereof, and regarding the installation, use, testing, operation, service, and maintenance thereof.

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

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule required by the Architect or, in



the absence of a required submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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

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

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

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

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

### **§ 3.13 USE OF SITE**

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

§ 3.13.1 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. Materials stored off-site shall be stored in a bonded warehouse in the county where the Project is located. After equipment is no longer required for the Work, it shall be promptly removed from the Project site by the Contractor. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.3 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the site of the Work.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor on a daily basis shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. The premises are defined as the Project site and includes the Project limits as described in the Contract Documents, and public streets and private ways that are adjacent to the site and utilized for access and construction activity. The Contractor shall provide on-site containers for the collection of waste materials, debris, rubbish, and shall periodically, remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the Project site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project, including mud and dirt on streets and roads caused by the operations of the Contractor and subcontractors and bear all cost associated with this task. Immediately after unpacking materials, equipment and machinery, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building. Care shall be taken not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way, the Contractor or any of its Subcontractors shall clean and restore such surfaces to their original condition.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean the exterior and interior surfaces exposed to view, remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces, polish transparent and glossy surfaces, clean equipment and fixtures to a sanitary condition, replace air filters in mechanical equipment, clean roofs, gutters, and downspouts, remove obstructions and flush debris from drainage systems, clean site, sweep paved areas and rake clean other surfaces, remove trash and surplus materials from the site, clean and polish all floors, clean and polish all hardware, and repair all Work damaged during cleaning.

§ 3.15.4 After Substantial Completion and prior to Final Completion, the Contractor shall: (1) employ skilled workers for final cleaning, (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces, (3) wash and shine glazing and mirrors, (4) polish glossy surfaces to a clear shine, (5) vacuum carpeted and similar soft surfaces, (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors, (7) clean plumbing fixtures to a sanitary condition, (8) clean surfaces of all equipment and remove excess lubrication, (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils, (10) clean light fixtures, (11) remove waste, foreign matter and debris from roofs, gutters, downspouts, yard drains, and drainage ways, (12) remove waste, debris and surplus materials from the site, (13) remove the stains, spills and foreign substances from paved areas, and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

#### § 3.16 ACCESS TO WORK

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

#### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

#### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend, and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The Contractor hereby further acknowledges and agrees that should any Contractor or subcontractor or supplier of the Contractor file a claim or institute any legal proceeding against the Owner concerning any dispute or controversy arising from any acts, errors or omissions of the Contractor, then the Contractor shall indemnify (or contribute) and hold the Owner harmless from any and all costs, including, but not limited to legal costs and attorneys' fees and payments of any judgment against the Owner.

### ARTICLE 4 ARCHITECT

#### § 4.1 GENERAL

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

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

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

## § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment and, with the Owner's concurrence, from time to time during the one-year period for correction of work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

## § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Contractor shall direct all correspondence relevant to the Contract Documents to the Architect with a copy for the Owner's representative. Architect shall then distribute to appropriate parties for review.

§ 4.2.5 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect shall reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect and the Contractor shall promptly notify, orally and in writing, the other party and the Owner of any fault or defect in the Work or nonconformance of the Work with the Contract Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and the



Owner of those corrective actions they respectively take; provided, however, the Contractor shall have no duty to notify the Owner of discoveries made or actions taken by the Architect.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion and Final Completion pursuant to Section 9.8 and Section 9.10; receive and forward to the Owner, for the Owner's review and records, the record documents required by Section 3.11, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Requests from Contractor for clarification or information shall clearly define the cause(s) of Contractor's request and, as appropriate, shall include Contractor's interpretation and Contractor's proposed solution. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

## § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. However, no increase in the Contract Sum or Contract Time shall be allowed for such change, if any, unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.2.5 Each Contractor, Subcontractor, and Sub-Subcontractor shall be required to completely familiarize themselves with the plans and specifications, to visit the Work site to complete familiarize themselves with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sums shall be allowed for failure to so inspect and investigate.

## § 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.2 All agreements between the Contractor and Subcontractors shall state be in writing that the Owner "is an intended third-party beneficiary of this Contract." Consistent with third-party beneficiary status, neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors and Sub-Subcontractors.

## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

*(Paragraph deleted)*

*(Paragraph deleted)*

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

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

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

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

### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall

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be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

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

§ 7.1.4 Allowance balances may be used to fund changes in the Work. The total fee of the Contractor shall be reconciled with the final balances for Allowances and Contingency line items to ultimately ensure that the final Contractor's Fee is a multiplier of the actual cost of the Work covered by the Allowance and Contingency items.

### § 7.2 CHANGE ORDERS

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time. Any Change Order which adjusts the Contract Time or the date of Substantial Completion must be signed, in addition to the foregoing, by an authorized representative of Wingate University, Blue Ridge Community College, and Henderson County Hospital Corporation.

§ 7.2.2 The Contractor stipulates that the acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.

§ 7.2.3 When changes in the Contract Sum, either additions or deductions, are based upon unit prices and/or allowances, the total fee of the Contractor shall be reconciled with the final cost of the Work to ensure that the final Contractor's Fee is the correct multiplier of the actual cost of the Work.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

Time being adjusted accordingly. Any Construction Change Directive which adjusts the Contract Time or the date of Substantial Completion must be signed, in addition to the foregoing, by an authorized representative of Wingate University, Blue Ridge Community College, and Henderson County Hospital Corporation.

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

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

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

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

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

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

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment.

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The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work Shall Commence upon the last occurrence of all the following events: (a) Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, (b) the Owner's issuance of a Notice to Proceed, and (c) the receipt of all required construction permits.

§ 8.1.3 The date of Substantial Completion of the Project is the date certified by the Architect in accordance with Section 9.8. The date Final Completion for each phase of Work is the date certified by the Architect in accordance with Paragraph 9.10. Unless otherwise agreed in writing by the Owner, the Contractor agrees that each phase's Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

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

#### § 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion.

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

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or government action, fire, or by delay authorized in writing by the Owner or by other causes that the Architect determines may justify delay, then the Contract Time may



be extended by Change Order to the extent such delay will prevent the Construction Manager from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, and would not have been delayed by any other cause for which the Construction Manager is not entitled to an extension in the Contract Time under the Contract Documents. The Construction Manager further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contract, (ii) could not be limited or avoided by the Construction Manager's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration of not less than one (1) day.

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

**§ 8.3.3** This Agreement does not permit the recovery by the Contractor of monetary damages, including, without limitation, extended home office overhead expenses, general conditions, consequential damages, or other compensable damages for delay or disruption or for extensions of time due to bad weather or acts of God, unless caused solely by the Owner or its Agent. In the event that a delay, disruption or extension of time beyond the contract date for Substantial Completion is caused solely by the Owner or its Agent, then the Contractor may claim actual direct expenses that have only been incurred as a direct result thereof.

**§ 8.3.4** Adverse weather conditions shall be defined as "weather extremes" (precipitation, temperature, and/or winds) which could not have been anticipated and which prohibit the type of construction activity scheduled during the time of adverse weather. Requests for extensions of Contract Time shall comply with section 15.3.7 herein.

**§ 8.3.5** Contractor agrees that dates under the Contract will not be extended due to normal inclement weather. For a time extension to be granted for abnormal, inclement weather a) such weather must, in the opinion of the Architect and the Owner's Representative, actually have an adverse effect upon the progress of the Contractor's work which is of a critical nature, and b) in the opinion of the Architect and the Owner's Representative, the adverse effect must not be due to any fault or negligence of Contractor and could not have been avoided by the Contractor through proper planning, coordination and implementation of adequate weather protection necessary to allow the Work to be continued without adverse effect upon labor production. Contractor agrees that the fact that abnormal inclement weather may occur does not, by itself, justify any time extension.

**§ 8.3.6** Failure on the Contractor's part to submit a claim for adverse weather each month shall constitute a waiver of the claim for the month. The Construction Progress Schedule shall be updated each month that unanticipated adverse weather days accrue.

#### **§ 8.4 RESPONSIBILITY FOR COMPLETION**

**§ 8.4.1** The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations, Saturdays, Sundays and holidays, as may be necessary to ensure the progress and completion of the Work in accordance with the approved and then current updated Construction Progress Schedule. If work falls behind such schedule and if it becomes apparent from such schedule that the Work will not be completed within the Contract Time, the Contractor agrees that it shall, as necessary, take some or all of the following actions at no additional cost to the Owner, as required to substantially eliminate, in the judgment of the Architect, the backlog of work:

1. Increase manpower in quantities and crafts necessary;
2. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment, or any combination of the foregoing;
3. Reschedule activities as needed, including critical path activities where possible; and/or
4. Employ the services of a construction time management consultant to be approved by the Owner at Contractor's sole cost and expense.
5. Use construction contingency to expedite work without increasing the GMP.

**§ 8.4.2** The Architect may require the Contractor to submit a recovery schedule within a reasonable

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time set by the Architect demonstrating the Contractor's program and proposed plan to make up the lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the Architect finds the proposed plan not acceptable, it may require the Contractor to submit a new plan. If the actions taken by the Contractor on the second proposed plan are not satisfactory, the Architect may require the Contractor to take any of the actions set forth in this Section 8.4, including use of construction contingency, without additional cost to the Owner, to make up the lag in scheduled progress.

§ 8.4.3 Failure of the Contractor to comply with the requirements of this section 8.4 may be considered grounds for determination by the Owner that the Contractor is failing to prosecute the Work with sufficient diligence to ensure its completion within the Contract Time.

§ 8.4.4 Damages for the delay shall be assessed against the various contractors regardless of their respective degrees of responsibility for the delay in the event that work is delayed beyond the Contract Times. Therefore, the Contractor and Owner agree that for each day of delay in excess of the Contract Times for construction, each Contractor shall pay to the Owner the sum of one thousand dollars (\$1,000) per day related to Substantial Completion and five hundred dollars (\$500) per day related to Final Completion as liquidated damages, not as a penalty, reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the Contractors to complete the Work within the Contract Times, such time being of the essence of the Contract and a material consideration thereof.

Furthermore, the Owner may, upon recommendation of the Architect and upon written notice to the Contractors, withhold from the Contractors monthly pay requests up to the sum of five hundred dollars (\$500) per day for each day that the Project is determined to be behind schedule at any time that the Project has remained behind schedule for more than thirty days. Said damages shall be withheld until such time as it is determined that the Project is back on schedule and may be applied to satisfy in whole or part any final amount of liquidated damages assessed against the Assessment of liquidated damages is not subject to the provisions of Article 15.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

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

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The monthly Application for Payment shall be submitted by the Contractor so it will be received by the Architect not later than the last day of the month. The Architect will submit Applications for Payment that are approved to the Owner by the fifth (5) of the following month, and the Owner will make payment to the Contractor by the 15<sup>th</sup> of that month. The Applications for Payment for operations completed shall be in accordance with the Schedule of Values.

Each copy of the Contractor's monthly Application for Payment shall bear the following certification over the Contractor's signature:

I hereby certify that the labor and material listed on this statement have been used in the construction of this work and that all material included in this statement and not yet incorporated into the construction is stored on the site or off site in accordance with the terms of the Contract Documents and that the material is protected and insured as specified and that all such labor and material have been paid for in full.

Payments will be made on the basis of ninety-five percent (95%) of approved monthly

applications. When the Owner has received the Architect's final Certificate for Payment and the Owner, the Architect and all regulatory agencies have formally accepted all of the work, final payment will be made within thirty (30) days thereafter.

When work under the Contract is fifty percent (50%) complete and if satisfactory progress is being made, and subject to approval of the Architect and the Contractor's Surety, the Owner may make remaining monthly payments in full. "Satisfactory progress" under this section, includes but is not limited to, the duty of the Contractor to fully correct all Work that has been identified in writing as "nonconforming" by the Architect, Owner or Engineer. Such corrective Work must be accepted by the Architect, Owner or Engineer.

The full Contract retainage may be reinstated if the manner and progress of the Work does not remain satisfactory to the Architect and Owner and to the extent necessary (not to exceed 5% at any one time) to enable the Owner to retain 2.5% total retainage through final completion. In addition to the provisions of this section, the Owner retains the right to withhold payment for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

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

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specified materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and the Architect's expenses related to visiting the off-site storage area and reviewing the stored contents.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment delivered to the Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until such materials and equipment are incorporated into the Work.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR SUBCONTRACTORS, SUB-SUBCONTRACTORS, MATERIAL SUPPLIERS OR ANYONE CLAIMING BY,

THROUGH OR UNDER THE CONTRACTOR, SUBCONTRACTOR, OR SUB-SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

## § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within five days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures.

## § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- or
- .7 repeated failures to carry out the Work in accordance with the Contract Documents.
- .8 liens or claims of liens with respect to any portion of the work; or
- .9 failure to submit a written plan indicating action by the Contractor to restore, keep or maintain the Work on schedule for completion of Work within the Contract Time.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.



§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under the Contract Documents, then the Architect may withhold any further Certificate for Payment to the Contractor to the extent necessary to preserve sufficient funds to complete construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reasons of withholding payment as provided for in Sections 9.3.2, 9.5.1 or this Section.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall notify the Contractor within twenty-one days if the Owner disputes the Architect's Certificate for Payment or the Contractor's Payment Application, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or the Surety from any obligations under the Contract Documents or the Performance and Payment Bonds.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

## § 9.7 FAILURE OF PAYMENT

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



## § 9.8 SUBSTANTIAL COMPLETION

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

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

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

§ 9.8.4 When the Work is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion.

§ 9.8.5 The Contractor shall achieve Final Completion of each phase of the Work within thirty (30) days after the date of Substantial Completion for each phase.

## § 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

## § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security

interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- .1 Written certifications required by Sections 10.5, 10.6, and 10.7;
- .2 Final list of Subcontractors (AIA Document G705);
- .3 Warranties, organized as required elsewhere in the Contract Documents;
- .4 Maintenance and Instruction Manuals;
- .5 The Owner's Final Completion Certificate; and
- .6 Record drawings and "as-built" drawings. At the completion of the Project, the Contractor shall submit one complete set of "as-built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items. The Contractor shall submit these as electronic, sepi, or other acceptable medium, in the discretion of the Owner.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment shall be paid by the Owner to the Contractor within thirty (30) days after the Owner's Board has voted to approve Final Payment.

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

#### **§ 9.10.4**

*(Paragraphs deleted)*

*(Paragraph deleted)*

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

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

#### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

**§ 10.1.1** The Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for those acts any of them may be liable, shall not perform any service for the Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages or any controlled substance while on the Owner's premises. No person shall use, possess, distribute or sell illicit drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on the Owner's premises.

**§ 10.1.2** The Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on the Owner's premises or performing the Work. The Contractor will remove any of its

employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. The Owner has the right to require the Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies as a result of a for-cause-test, conducted immediately following removal that said person was in compliance with this Section. The Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

§ 10.1.3 The Contractor will comply with all applicable federal, state and local drug and alcohol-related laws and regulations (e.g. Department of Transportation regulations, Drug-Free Workplace Act). The Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a concealed weapon, and the Contractor agrees that the Contractor's representatives, employees, agents, Subcontractors and Sub-Subcontractors will abide by same.

## § 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other properties at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

§ 10.2.3 The Construction Manager shall also be responsible, at the Construction Manager's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Construction Manager.

§ 10.2.4 When use or storage of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to the Owner and the Architect. The storage of explosives other than small explosive charges for nail or rivet guns on the Owner's property is prohibited. The use of explosive materials on the Owner's property other than small explosive charges for nail or rivet guns is prohibited unless expressly approved in advance in writing by the Owner and the Architect.

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

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

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

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.2.9 The Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injury, or serious property damage is caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect

#### § 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner may obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. In the event that hazardous materials are found to be present, the Contract Time may be extended appropriately and the Contract Sum may be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start up by change order or, in the absence of agreement to a change order, at the direction of the Architect.

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

§ 10.3.4 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1.

*(Paragraphs deleted)*

*(Paragraphs deleted)*

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.



#### **§ 10.5 ASBESTOS OR ASBESTOS CONTAINING MATERIALS**

Prior to payment of retainage and final payment, the Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of the Work contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found in the Work in concentrations greater than 0.1 fibers per cubic centimeter then the Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Work, at no additional cost to the Owner. The written certification shall be dated, shall reference the specific Work and shall be signed by an officer of the Contractor.

#### **§ 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM**

**§ 10.6.1** Prior to payment of retainage and final payment, the Contractor and each Subcontractor involved with the potable water system shall furnish a written certification that the potable water system installed as a part of the Work is "lead-free".

**§ 10.6.2** The written certification shall further state that should lead be found in the potable water system built under this work, then the Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Work, at no additional cost to the Owner. The written certificate shall be dated, shall reference the specific Work and shall be signed by an officer of the Contractor.

#### **§ 10.7 HAZARDOUS MATERIALS CERTIFICATION**

The Contractor shall provide written certification that no materials used in the Work contain lead, asbestos, volatile organic compounds, formaldehyde, or other hazardous materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (SHA) standards, whichever is most restrictive. The Contractor shall provide this written certificate as part of submittals under the Section in the Project Manual related to Contract Closeout.

### **ARTICLE 11 INSURANCE AND BONDS**

The following requirements modify the requirements of Article 11 of the General Conditions: The Contractor shall not commence work under the Contract until it has obtained all insurance required under this Article or as required by law, and until such insurance has been approved by the Owner. The Contractor shall not allow any grading and site work, roofing, mechanical, plumbing or electrical Subcontractor(s) to commence work until all similar insurance as specified in this Article has been so obtained and the Contractor has presented the Owner with a Certificate of Insurance evidencing such coverage. Prior to the commencement of any work, the Contractor shall require all other Subcontractors and any Sub-Subcontractors to provide insurance coverage as required by law and as reasonably necessary given the scope of the Subcontractor or Sub-Subcontractor's work. The Contractor shall present the Owner with a Certificate of insurance evidencing such coverage. All Certificates of insurance must be on Acord Form 25 or later version as approved by the North Carolina Department of insurance.

#### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;



- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

Contractor's Liability Insurance shall include all major divisions of the Work and be on a comprehensive basis including:

- a) Premises/operations (including explosion, collapse and underground as applicable).
- b) Independent Contractor's and *Owner's* and Contractor's Protective.
- c) Products and completed operations.
- d) Personal injury liability with employment exclusion deleted.
- e) Owned, non-owned and hired motor vehicles.
- f) Broad form property damage including completed operations.
- g) Any and all liability by way of indemnification, contribution and contractual liability.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, which shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.2.1 The insurance required by section 11.1.1 shall be written for not less than the following limits, or greater if required by law:

**1. Worker's Compensation:**

- a. State Statutory
- b. Applicable Federal Statutory
- c. Employer's Liability
  - i. \$100,000 Each Accident
  - ii. \$1,000,000 Disease, Policy, Limit
  - iii. \$100,000 Disease, Each Employee

**2. Commercial General Liability** (including premises/operations, independent contractors, products and completed operations):

- a. Bodily Injury & Property Damage (combine single limit):
  - \$1,000,000 Each Occurrence
  - \$2,000,000 Annual Aggregate
- b. Products and completed operation to be maintained for one (1) after final payment.

**3. Contractual Liability** (Hold Harmless Coverage):

- a. Bodily Injury & Property Damage (combined single limit):
  - \$1,000,000 Each Occurrence
  - \$2,000,000 Annual Aggregate

**4. Personal Injury, with employment exclusion deleted:**

- \$1,000,000 Annual Aggregate

5. **Comprehensive Automotive Liability (owned, non-owned and hired):**
  - a. Bodily Injury & Property Damage (combine single limit):  
\$1,000,000                      Each Accident
6. **Excess Liability (umbrella):** Minimum Limits
  - a. \$2,000,00                      Over Primary Insurance  
Policies must follow the form of the base policies
7. **Owner's Protective Liability Insurance:** The Contractor shall purchase and maintain owner's protective liability insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract Documents. Limit of coverage required for this insurance shall be not less than \$1,000,00 combined single limit.
8. **Builder's Risk Insurance:**

The Contractor shall effect and maintain all ISO Special Causes of Loss perils, including peril of transit upon the entire Project on which the Work is to be done, to one hundred percent (100%) of the insurable value thereof, including but not limited to, items of labor and materials connected therewith, whether in or adjacent to the structure insured; materials in place or to be used as part of or in the construction of the permanent construction, including but not limited to, surplus materials, shanties, protective fences, bridges, and temporary structures; miscellaneous materials and supplies incidental to the Work; and such scaffolding, staging, towers, forms, and equipment as are not owned or rented by the Contractor, the cost of which is included in the cost of the Work. Such insurance must be maintained in full until Final Completion of the Project and, prior to canceling such insurance, Contractor shall notify Owner in writing.

Exclusions: This insurance need not cover: any tools owned by the mechanics; and tools, equipment, scaffolding, staging, towers, and forms rented or owned by the Contractor, the capital value of which is not included in the Work; or any structures erected for housing of or service to workmen.

A loss, if any, is to be adjusted with the Owner, and is to be payable to the Owner and to the Contractor jointly, as their interests may appear. The Owner shall be named on the policy, by rider or other applicable endorsement as an additional insured.

**§ 11.1.3** Certificates of insurance: No later than the date of the execution of the Contract, the Contractor will submit to the Owner four (4) copies of Certificates of insurance on the latest approved North Carolina Department of Insurance Acord Form 25 by an insurer authorized to do business in North Carolina by the North Carolina Department of Insurance and rated A- (minus) or better by A.M. Best Company. The certificates shall certify that the insurance policies carried by Contractor were in force before the Work commenced and certifying that these policies include endorsements issued by the insurer stating that the applicable insurance will not be canceled during the Contract other than by an endorsement added to the policies and certificates reading substantially as follows: 'The policies herein referred to me not cancelable or subject to reduction of coverage by the Insurer unless the Owner has received thirty (30) days written notice via registered or certified letter.' Additional Certificates of insurances will be provided, from time to time, as listed policies expire in order to evidence continuance insurance coverage from the date of the Contract through the end of the one (1) year correction period following the date of Final Completion. Certificates of Insurance containing disclaimers holding the insurer harmless for failure to notify the Owner of Contractor policy cancellations will not be acceptable and should be modified to delete such disclaimers from the Insurance Certificate forms. Evidence of insurance requirements of these Supplementary General Conditions may be provided by modifications to Acord Form 25 by endorsement, rider or separate certification by the insurer. No surplus lines insurance shall be acceptable.

In preparation of these forms, the following items should read:

1. The description of the Project/ the Work/operations/locations/vehicles/special items.
2. The certificate holder is:

County of Henderson  
1 Historic Courthouse Square, Suite 5  
Hendersonville, North Carolina 28792

3. The cancellation statement is:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

All blanks and questions on certificates must be filled out completely. Incomplete or inadequate certificates will be returned to Contractor as unsatisfactory and commencement of its Work will be delayed until satisfactory certificates are submitted. Such delay will not warrant extension of the Contract Time. In the event of a reduction in any aggregate limit, the Contractor shall take immediate steps to have it reinstated. All insurance coverages of the Contractor shall be primary to any insurance or self-insurance program carried by the Owner. Renewal Certificates of Insurance on the Owner's form must be provided to the Owner thirty (30) days prior to expiration of current coverages so that there shall be no interruption in the Work due to lack of proof of insurance coverages required of the Contractor in the Contract Documents.

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 11.1.5** The acceptance of delivery to the Owner of any Certificate of Insurance evidencing the insurance coverages and limits required in the Contract does not constitute approval or agreement by the Owner that the insurance requirements in the Contract have been met or that the insurance policies shown in the Certificates of insurance are in compliance with the Contract requirements.

**§ 11.1.6** Should at any time the Contractor not maintain the insurance coverages required of it in the Contract Documents, the Owner may either cancel or suspend the Contract or, at its sole discretion, shall be authorized to purchase such coverage and charge the Contractor for such coverages purchased. The Owner shall be under no obligation to (1) purchase such insurance, (2) be responsible for the coverages purchased, or (3) be responsible for the insurance companies used. The decision of the Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under the Contract Documents.

**§ 11.1.7** If any General Liability Insurance required herein is to be issued or renewed on a "claims made" form as opposed to the "occurrence" form, the retroactive date for coverages shall be no later than the commencement date of the Project and shall provide that in the event of cancellation or non-renewal the discovery period of insurance claims shall be unlimited.

**§ 11.1.8** All policies described in this paragraph 11.1 shall be made available to the Owner or its legal representatives by means of exact copies of the original policies and placed in the hands of the Owner or its representatives.

§ 11.1.9 If requested in writing by any party in interest, the Contractor shall, upon occurrence of loss, furnish bond for the proper performance of its duties. The Contractor shall deposit any money received from insurance in an account separate from all its other funds; and it shall distribute it in accordance with such agreement as the parties of interest may reach, or in the absence of such an agreement, as the interest of the parties may appear. Replacement of injured work shall be performed by the Contractor.

#### § 11.2 OWNER'S LIABILITY INSURANCE

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

*(Paragraphs deleted)*

*(Paragraphs deleted)*

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The cost of the Bonds shall be included in the Contract Sum. The Bonds shall guarantee the Contractor's faithful performance of the Contract and the payment of all obligations arising thereunder. The Bonds shall remain in force until the later of the following has occurred:

- a. The Contract has been fully performed by the Contractor; and
- b. The Project has been completed and accepted by the Owner; and
- c. The provisions of all warranties and guarantees required by the Contract Documents have been fulfilled; and
- d. The time for the filing of all mechanics liens has expired; and
- e. The applicable North Carolina General Statute of repose has expired.

Bonds which seek to limit the time for bringing a suit to less than the foregoing are unacceptable

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

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

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

#### § 12.2 CORRECTION OF WORK

##### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.1.2 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. The Contractor shall be responsible to the Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.



## § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligation to perform each phase of the Work in accordance with the Contract and in addition to all express and implied warranties, if, within one year after Substantial Completion of each phase of the Work, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. The Contractor will also present to the Owner an Alternate bid to include an additional one (1) year, for a total two (2) year, workmanship warranty related to the roofing system as detailed in section 3.5.3.

*(Paragraph deleted)*

*(Paragraph deleted)*

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work within thirty (30) days, then the Owner may perform corrective Work, at the Contractor's expense. If the Owner performs corrective Work, then the Owner may also remove nonconforming Work and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay all costs incurred by the Owner within ten (10) days after written notice, then the Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with the Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

*(Paragraph deleted)*

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

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

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

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

§ 12.2.6 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor and Sub-Subcontractors as well as Work done directly by employees of the Contractor.

## § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the laws of The State of North Carolina and any litigation shall be conducted in the appropriate division of the General Course of Justice. Mandatory and exclusive venue for any disputes shall be in the county in which the Owner's main administrative office is located. The invalidity of any part or provision of the Contract shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract.



## § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

## § 13.3 WRITTEN NOTICE

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

## § 13.4 RIGHTS AND REMEDIES

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

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

## § 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

### § 13.6 INTEREST

The owner shall pay prime interest rate as published for such date in the Wall Street Journal."

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.7.1 The Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, or other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by the Contractor for at least seven (7) years after the date of Final Completion of the Project. Within thirty (30) days of the Owner's request, the Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, the Architect or their respective representatives, at the Owner's central office

### § 13.8 EQUAL OPPORTUNITY

§ 13.8.1 The Contractor and all subcontractors shall not discriminate against any employee or applicant for employment because of handicap, race, religion, color, sex, national origin, or age. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their handicap, race, religion, color, sex, national origin, or age. Such actions shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth its policies of non-discrimination.

§13.9 As a condition of payment for services rendered, Construction Manager must comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Construction Manager shall further require all Subcontractors to comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Construction Manager shall verify, by affidavit, compliance of the terms of this section upon request by the Owner.

§ 13.8.2 The Contractor and all subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to handicap, race, religion, color, sex, national origin, or age.

§ 13.8.3 The Contractor shall further initiate and maintain policies to ensure minority business enterprise participation in the Work in accordance with the provisions of the "Minority Business Participation Policy" as promulgated by the Henderson County Board.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

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

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 120 days in any 365-day period.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination.

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

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages included by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract. This Section 14.2.4 is in addition to and not in limitation of any other rights and remedies of the Owner.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this section:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- .4 proceed to complete the Work not terminated; and
- .5 take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

§ 14.4.3 Upon each termination, the Contractor shall recover as its sole remedy payment 1) for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, 2) for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instruction, and 3) for profit on the Work not executed. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation overhead related to the Work not executed.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of Contract terms, extension of time, or other relief with respect to the terms of the Contract, the Project or the Work. The responsibility to substantiate Claims shall rest with the Contractor.

##### § 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor must be initiated by written notice to the Owner and with a copy sent to the Architect. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and the Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof. To the extent that the damages cannot be assessed at the time of the Notice, the Notice shall be amended at the earliest date reasonably possible. It is imperative that the Owner receive timely specific Notice of any potential problem identified by the Contractor in order that the problem can be mitigated or resolved promptly. Any alleged damages suffered by the Contractor that have not been included in a Notice within ninety (90) days after the Contractor first knew or should have known the damages shall be deemed waived by the Contractor.



### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for additional cost or an increase in the GMP, written notice as provided herein shall be given to the Owner and the Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such claim and report findings and a recommended resolution in writing to the Owner and the Contractor. If the Claim is approved by the Board or the Owner's Representative, then the Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then the Contractor may pursue alternative dispute resolutions provided for in the Contract Documents.

### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

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

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and prevented the execution of critical path elements of the Work on normal working days. Adverse weather conditions mean unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year.

**§ 15.1.5.3** The Contractor shall anticipate and include in a critical path construction schedule rain day due to adverse weather conditions in accordance with the average rainfall expected for the locality and/or the month in question. A rain day is defined as a day when rainfall exceeds one-quarter (0.25) inch from project inception to building dry-in and one-half (0.50) inch post building dry-in during a 24-hour period.

**§ 15.1.5.4** Time extensions may be granted for rain days in any month when the cumulative number of rain days during that month exceeds the number scheduled, provided that the rainfall prevented the execution of the critical path of the Work on normal working days as shown on the Contractor's schedule. No day will be counted as a rain day when substantial forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the critical path of the Work on the Project is not adversely impacted.

**§ 15.1.5.5** No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of the Contractor or the Contractor's Subcontractors or Sub-Subcontractors or under the Contractor's control. Claims for extension of time may only be considered because of adverse weather conditions, rain delays, or hindrances or delays which are the fault of the Owner and/or under the Owner's control, but only to the extent that the critical path of the Work is delayed. Other claims for extension of time shall be considered because of hindrances or delays not the fault of either the Contractor or the Owner, but only to the extent that the critical path of the Work is delayed. Board approval shall be required for any extension of time. No damages shall be paid for delays. The Contractor shall only be entitled to time extensions per the terms of the Contract Documents

**§ 15.1.5.6** Requests for time extension shall be submitted on a monthly basis and shall specify the time delay, the cause of the delay, and the responsible party for the delay, whether the Contractor, the Owner, adverse weather, rain day, or other. No claims for damages for delay shall be made by the Contractor. Any claim not submitted under the terms of this Section shall be waived.

### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

Except to the extent covered by the valid and collectible insurance required respectively to be carried by Construction Manager or Owner under Article 11, the Construction Manager and Owner waive all claims



against each other for consequential damages arising out of or relating to this  
(Paragraphs deleted)

Contract; provided, however, that in no event shall this mutual waiver be deemed to preclude (i) an award of liquidated damages recoverable under this Agreement; (ii) the use of diminished income stream (or rents) in the calculation of "diminution of value" of the Work, in the event the Owner exercises its right under Section 12.3 to reduce the Contract Sum by an appropriate amount; or (iii) the obligation of the Construction Manager to reimburse the Owner for any fines from government entities or additional costs and expenses for the Architect or other consultants, or separate contractors, arising out of any act or omission of the Construction Manager.

(Paragraphs deleted)

## **§ 15.2 RESOLUTION OF CLAIMS AND DISPUTES**

**§ 15.2.1** Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

**§ 15.2.2** The Architect will review Claims and within ten (10) days of the receipt of the Claim take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

(Paragraphs deleted)

**§ 15.2.3** In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in making a written recommendation.

**§ 15.2.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of such a request, and shall provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished.

**§ 15.2.5** As required by North Carolina General Statute Section 143-128(f1), the Owner, the Contractor, the Architect and all first-tier and lower-tier Subcontractors and Sub-Subcontractors are required to participate in mediation as a precondition to initiating litigation. The dispute resolution process adopted by the State Building Commission pursuant to North Carolina General Statute Section 143-135.26(11) is hereby adopted and incorporated by reference for use in conducting the mediation. Statutory, contract, bond, insurance, warranty and all other time periods (including but not limited to applicable statutes of limitation and statutes of repose) shall be tolled (suspended from running) during the mediation process. The costs of the mediation shall be paid one-third by the Owner and two-thirds by the other party or parties to the mediation, divided equally among the other parties if there is more than one other party.

**§ 15.2.6** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

(Paragraphs deleted)

(Paragraphs deleted)

## **§ 15.3 LITIGATION**

**§ 15.3.1** Any Claim arising out of or related to the Contract, except Claims waived under the terms of the Contract Documents, shall, subject to the provisions of Section 15.2.5, be subject to resolution by litigation.

*(Paragraphs deleted)*

*(Paragraphs deleted)*

**§ 16 GENERAL**

**§ 16.1** These General Conditions and the General Requirements, the original Request for CM at Risk Qualifications, the forms of various required documents, and any Special Conditions, modify and amend AIA Document A 133-2009, entitled "Standard Form of Agreement Between Owner and Construction Manager as Constructor," and AIA Document A701-1997, entitled "Instructions to Bidders,".

*(Paragraph deleted)*



# **Additions and Deletions Report for**

## **AIA® Document A201™ – 2007**

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

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### **PAGE 1**

Innovative High School  
180 W. Campus Drive  
Flat Rock, NC 28731

...

*(Name, legal status and address)*  
Henderson County  
100 North King Street  
Hendersonville, NC 28792

...

Clark Nexsen  
301 College Street, Suite 300  
Asheville, NC 28801

### **PAGE 10**

#### **§1.1.9 DEFINITIONS**

**§1.1.9.1** As used in this document, the term "Contractor" shall in all instances be replaced with "Construction Manager".

**§1.1.9.2** As used in this document, the terms "knowledge", "recognize" and "discover", their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Construction Manager, shall be interpreted to mean that which the Construction Manager knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contract familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

### **PAGE 11**

**§ 1.2.4** In the event of discrepancies or disagreements between Contract Documents, the order of precedence shall be as follows:

1. Agreement between Owner and Construction Manager
2. Modifications defined in Section 1.1.1
3. Addenda
4. Supplementary Conditions

5. General Conditions
6. Specifications
7. Drawings
8. As between schedules and information given on the drawings, the schedules shall govern.
9. As between schedules, information given on the drawings, and scaled measurements, the measurements shall govern.
10. As between large scale drawings and small scale drawings, the larger scale shall govern.

...

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

...

The Contract Documents are the property of the Owner which may be used by the Contractor, Subcontractors, materials and equipment suppliers for the Project only, and not for other projects of work.

*(Paragraphs deleted)*

~~§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.~~

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

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~~§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative, a body corporate and politic of the State of North Carolina, and may act only through a majority of its Board of Commissioners ("the Board").~~

~~The Board, by majority vote, is the only representative of the Owner having the power to enter into or amend the Contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, or to agree to an extension to the dates of Substantial or Final Completion. The Board will act when requested in writing to do so as soon as reasonably possible to avoid undue delays. The Board will designate an authorized representative to act on its behalf for day-to-day operations under the Contract. The Owner's authorized representatives have the authority to act on behalf of the Board in all matters other than those reserved to the Board above, except he has the authority to approve changes to the Work where such changes do not exceed \$25,000.00. Any such change shall be confirmed in writing between the Contractor and the Owner's Representative, and notice of such approved changes shall be given to the Board at its next regular meeting. The Architect does not have such authority except as otherwise provided in the Contract Documents. Neither the Architect nor the Contractor may rely upon direction of any employee of the Owner who has not been designated in writing by the Superintendent or the Board;~~

the Owner shall not be financially responsible for actions taken by the Architect or the Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. It shall be distinctly understood that no mechanic, Contractor, Subcontractor, material or equipment supplier, and/or supplier of labor services, shall ever in any manner have, claim, or acquire any lien upon the buildings, equipment, or furnishings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of its improvements are to be erected, built or situated, such property belonging to a body corporate and politic of the State of North Carolina.

§ 2.1.3 The Owner shall require the Contractor, the Subcontractors, the Architect and the Architect's consultants to meet periodically at mutually-agreed-upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication and timely responses among the participants in the performance of the Work.

§ 2.1.4 The Owner may require that the Contractor use and/or respond to certain Owner furnished forms or inquiries regarding the status of the Work during the course of the Project. From time to time, there may be future revisions, changes, additions, or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 2.1.5 The Contractor stipulates and agrees that the Owner has no duty to discover any design defects, errors, or omissions whether in the Drawings, Plans, Specifications and other Construction Documents. The Owner will, however, notify the Contractor and the Architect of design defects, errors or omissions of which the Owner's Representative or the Board have actual knowledge. By entering into the Contract Documents or any Agreement with any Architect, the Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Construction Documents.

## PAGE 13

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance. Contractor shall establish all lines and levels required to properly execute the Work, and shall pay for all costs to establish them, and shall be responsible for their maintenance and accuracy. The Contractor shall coordinate the Work with the Architect regarding the recommendations set forth in any Owner furnished information, particularly where excavation of unsuitable soils and replacement of fill materials are described, if any, which may be required for the proper and complete installation of the Work.

...

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

...

## **§2.5 EXTENT OF OWNER RIGHTS**

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures for safety precautions and programs in connection with the



Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor represents and warrants by execution of the Agreement that he has carefully examined the Project Manual and Addenda, the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports and the site of the Work, and that, from his own investigations, he has satisfied himself as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of machinery and equipment and other facilities needed for the performance of the Work, the character, quality, quantity, and availability of labor and Subcontractors required for the Work, the character, quality and quantity of professional services required for the Work, the character, quality, quantity and availability of materials, machinery, equipment and furnishings required for the Work, and all other matters and things which may in any way affect the Work or its performance. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify the Architect and Owner in writing, and the Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of Work.

...

§ 3.2.3 The Contractor is not Neither the Owner nor the Contractor is required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

...

§ 3.2.5 Prior to performing any Work, the Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to the Contractor. In addition, the Contractor shall review appropriate hazardous material surveys for the Project, and shall notify all Subcontractors and Sub-Subcontractors of the necessity to review such surveys. The Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials or other hazardous materials that are clearly identified and located in hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades, and elevations, existing improvements, and general suitability of existing conditions at the Project site.

§ 3.2.6 The Contractor shall arrange meetings prior to commencement of the Work of all major subcontractors to allow the Subcontractors to demonstrate an understanding of the Work and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. Each major Subcontractor shall review the Project Manual and the Construction Documents and shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed.

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall

evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or ~~procedures~~ procedures per Article 15.

## PAGE 15

§ 3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and Subcontractors. The Contractor shall develop and maintain a schedule of critical path construction activities for the Work. This critical path schedule shall be updated at least bi-monthly and presented to the Owner and Architect upon request.

§ 3.3.5 The Contractor shall review Subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity, including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances and manufacturers' instructions which shall include the obligation to provide for the safety of their employees, other persons, and property and the requirements to maintain a work environment free of recognized hazards.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for ~~labor~~, qualified, careful, and efficient workers and labor eligible to work in accordance with state and federal law, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, ~~transportation~~, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, the Contractor shall verify that all dimensions specified in the Drawings, Specifications and other Construction Documents are consistent with all actual dimensions in the field. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies exist and the Architect was not notified beforehand, then costs to correct and/or replace ordered materials shall be borne by the Contractor. This subsection does not relieve the Architect of any contractual duties owed to the Owner.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the ~~Contractor's~~ Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Architect and Owner reserve the right to require that the Contractor remove from the Project any employee whose actions are deemed by either of them to be detrimental to the Project.

§ 3.4.4 Subcontractors will not be permitted to establish their own normal working hours (such as 10 hours per day, four days per week) except with the written consent of the Contractor and the Architect and without additional compensation.

§ 3.4.5 Including, but not limited to, the specific requirements of Section 3.3.5 and Article 10, the Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal, state and local laws, regulations, guidelines, and ordinances pertaining to safety of persons and property applicable to the Work.

...

~~The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to § 3.5.1~~ The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. The Contractor further warrants and guarantees that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction projects similar to the Project, except to the extent the Contract Documents expressly specify a higher standard, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb, patterns shall be uniform, and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, systems, machinery, equipment or components not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 If, within any warranty period, repairs or changes are required in connection with warranted work, the Contractor shall promptly, upon receipt of notice from the Owner and without expense to the Owner:

1. Place in satisfactory condition in every particular all of such warranted Work and correct all defects therein;
2. Make good all damages to the buildings, sites, or equipment and contents, thereof, which, in the opinion of the Architect, are the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the Contract Documents;
3. Make good any work, materials, equipment, and contents of said buildings or sites which may have been disturbed in fulfilling any such warranty; and
4. If compliance with 1., 2., 3. are not completed in a reasonable period of time, then, the Contractor shall reimburse the Owner for all related costs and expenses, including attorneys' fees and fees of experts hired to investigate a warranty claim.

~~In any case wherein fulfilling the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment or any warranty embraced in or required thereby, the Contractor disturbs any Work warranted under another Contract, it shall restore such disturbed Work to a condition satisfactory to the Owner, and it shall warrant such restored Work to the same extent as it was warranted under such other Contract.~~

If the Contractor, after notice, fails to proceed within seven (14) days to comply with the terms of this warranty, the Owner may have the defects corrected, and the Contractor and its surety shall be liable for all reasonable costs and expenses incurred.

The Contractor shall defend and save the Owner harmless against any claim, demand, loss or damage

arising from any breach of this warranty by the Contractor.

This Section 3.5.2 is in addition to, and not in limitation of; any other warranties, rights, or remedies to which the Owner may be entitled.

§ 3.5.3 All specified express warranties required by the Contract Documents on workmanship, equipment, machinery, materials, systems or components shall be submitted in writing to the Architect for delivery to the Owner no later than the date of Final Completion and further agrees to perform the Work in such manner so as to preserve any and all such manufacturers, suppliers and installers' warranties. Unless specified otherwise, all warranties shall run from the date of Final Completion for a period of one (1) year. The Contractor will present to the Owner an Alternate bid to include an additional one (1) year workmanship warranty specific to the Roofing system. Warranties under Section 3.5. 1 are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.

§ 3.5.4 The Contractor shall include in the bid documents an Add Alternate Bid to further guarantee for a period of twenty-four (24) months that the building shall be watertight and leak free at every point and in every area. If the Add Alternate Bid cost is accepted by the Owner, the Contractor shall, immediately upon notification by the Owner of water penetration, determine the source of water penetration, and at Contractor's own expense, do any Work necessary to make the building watertight. Contractor shall also, at its own expense, repair or replace any other damaged material to return the building to its original accepted condition. The twenty-four (24) month period shall run from the later of the Contractor's last act or omission giving rise to a cause of action under this warranty or Substantial Completion of the Project.

§ 3.5.5 Upon written notice from the Owner or the Architect, the Contractor shall promptly remedy defects in the Work as covered by applicable warranties. If the Contractor does not respond to the written notice within fourteen (14) days of Contractor's receipt of a written notice, either by beginning corrective work or notifying the Owner in writing regarding when corrective work will begin, the Owner may take measures to correct the Work and the Contractor will be obligated to reimburse the Owner's costs including reasonable consultant, engineering and legal fees. The provisions of this section shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

§ 3.5.6 The warranties of the Contractor provided in Section 3.5 shall in no way limit or abridge the warranties of the manufacturers, suppliers, and installers of materials, machinery, equipment, systems or components which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. The Contractor shall take no action or fail to act in any way which results in the denial, termination, or expiration of such third party warranties or which otherwise results in prejudice to the rights of the Owner under such warranties. The Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the suppliers, manufacturers, and installers of such materials, machinery, systems, and equipment whereby the Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

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§ 3.6.1 The Contractor shall submit with its monthly Certification and Application for Payment a notarized certification of the sales tax payments made under the Contract and payments on its subcontracts made for all taxable materials installed and stored at the Project for the pay period.

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. If the Contractor disposes of or is required to dispose of materials from demolition, construction waste, excess dirt, rock and other materials, the Contractor shall pay all fees associated with disposal. All connection charges, assessments or inspection fees as may be



imposed by any agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

...

§ 3.7.6 In connection with the General Building, Plumbing, HVAC and Electrical Contracts, the Contractor shall provide the Owner through the Architect copies of inspection reports performed by the local building inspection department.

## PAGE 19

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

...

§ 3.9.4 In the event that the Contractor's superintendent(s) repeatedly fail to perform their functions in keeping with the standards commonly observed in the construction industry or repeatedly fail to cooperate and coordinate the Contractor's Work in conformance with the Contract Documents, then the Owner or Architect shall have the right to request the superintendent's removal in writing. The Contractor agrees that, upon receipt of written notice, the Contractor shall remove the superintendent from the Project within two (2) weeks and provide a suitable replacement.

§ 3.9.5 Contractor's resident superintendent shall provide the Owner's Representative and Architect with the Contractor's written daily field reports by email each working day.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall furnish the Owner and the Architect with copies of the schedule, all revisions to the schedule, and periodic (at least monthly) reports of actual performance of the Work in relation to the scheduled performance. The schedule must correlate with the schedule of values submitted by the Contractor.

## PAGE 20

§ 3.10.4 The Contractor shall keep informed of the progress and the detail of the Work of the Subcontractors and shall notify the Architect and Owner immediately of any failure of any Subcontractor to maintain the progress of the Work or of defective Work on the part of any Subcontractor. Failure of the Contractor to notify the Architect and Owner of schedule delays or defective Work shall be construed as acceptance by the Contractor of the status of the Work and as being satisfactory for the proper coordination of the Subcontractors' Work.

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked ~~currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals.~~ These documents shall be marked by Contractor on an on-going basis to record (i) deviations from the Drawings made



during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; and (iv) such other information as either the Owner or Architect may reasonably request. In addition, Contractor shall maintain one record copy of the approved shop drawings, field test records, inspection certificates or records, manufacturers' certificates, product data, samples and similar required submittals. The foregoing documents shall be available to the Architect ~~and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed,~~ and the Owner at all times and be delivered to the Architect following the completion of construction to enable the Architect to produce a set of "Record Drawings" showing the as-built condition of the improvements and any changes to existing conditions. Final payment and any retainage shall not be due and payable to the Contractor until after the foregoing documents have been delivered to the Architect.

...

**§ 3.12.2** Product Data ~~are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work,~~ consists of written, printed, drawn, sound recording, video recording, computer generated, electronic or other form of communication created by manufacturers, suppliers, testing organizations, standards organizations, manufacturer and supplier associations and trade groups, and similar creators of such communications, regarding materials, equipment, machinery, systems, processes and the components thereof, and regarding the installation, use, testing, operation, service, and maintenance thereof.

...

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. ~~Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.~~

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

## PAGE 21

**§ 3.12.8** The Work shall be in accordance with approved submittals and in accordance with the informational submittals upon which the Architect is not expected to take responsive action except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and ~~(4)~~ (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

...

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

## PAGE 22

**§ 3.13.1** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. Materials stored off-site shall be stored in a bonded warehouse in the county where the Project is located. After equipment is no longer required for the Work, it shall be promptly removed from the Project site by the Contractor. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

**§ 3.13.2** The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

**§ 3.13.3** Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the site of the Work.

...

**§ 3.15.1** The Contractor on a daily basis shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. The premises are defined as the Project site and includes the Project limits as described in the Contract Documents, and public streets and private ways that are adjacent to the site and utilized for access and construction activity. The Contractor shall provide on-site containers for the collection of waste materials, debris, rubbish, and shall periodically, remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the Project site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project, including mud and dirt on streets and roads caused by the operations of the Contractor and subcontractors and bear all cost associated with this task. Immediately after unpacking materials, equipment and machinery, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed

from the building. Care shall be taken not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way, the Contractor or any of its Subcontractors shall clean and restore such surfaces to their original condition.

...

§ 3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean the exterior and interior surfaces exposed to view, remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces, polish transparent and glossy surfaces, clean equipment and fixtures to a sanitary condition, replace air filters in mechanical equipment, clean roofs, gutters, and downspouts, remove obstructions and flush debris from drainage systems, clean site, sweep paved areas and rake clean other surfaces, remove trash and surplus materials from the site, clean and polish all floors, clean and polish all hardware, and repair all Work damaged during cleaning.

§ 3.15.4 After Substantial Completion and prior to Final Completion, the Contractor shall: (1) employ skilled workers for final cleaning, (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces, (3) wash and shine glazing and mirrors, (4) polish glossy surfaces to a clear shine, (5) vacuum carpeted and similar soft surfaces, (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors, (7) clean plumbing fixtures to a sanitary condition, (8) clean surfaces of all equipment and remove excess lubrication, (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils, (10) clean light fixtures, (11) remove waste, foreign matter and debris from roofs, gutters, downspouts, yard drains, and drainage ways, (12) remove waste, debris and surplus materials from the site, (13) remove the stains, spills and foreign substances from paved areas, and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

## PAGE 23

§ 3.18.1 To the fullest extent permitted by law the Contractor shall ~~indemnify~~ indemnify, defend, and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.3 The Contractor hereby further acknowledges and agrees that should any Contractor or subcontractor or supplier of the Contractor file a claim or institute any legal proceeding against the Owner concerning any dispute or controversy arising from any acts, errors or omissions of the Contractor, then the Contractor shall indemnify (or contribute) and hold the Owner harmless from any and all costs, including, but not limited to legal costs and attorneys' fees and payments of any judgment against the Owner.

## PAGE 24

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final ~~Certificate for Payment~~ Certificate for Payment and, with the Owner's concurrence, from time to time during the one-year period for correction of work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

...

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Contractor shall direct all correspondence relevant to the Contract Documents to the Architect with a copy for the Owner's representative. Architect shall then distribute to appropriate parties for review.

§ 4.2.5 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has ~~authority to~~ shall reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect and the Contractor shall promptly notify, orally and in writing, the other party and the Owner of any fault or defect in the Work or nonconformance of the Work with the Contract Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and the Owner of those corrective actions they respectively take; provided, however, the Contractor shall have no duty to notify the Owner of discoveries made or actions taken by the Architect.

#### PAGE 25

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of ~~final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; Final Completion; issue~~ Certificates of Substantial Completion and Final Completion pursuant to Section 9.8 and Section 9.10; receive and forward to the Owner, for the Owner's review and records, the record documents required by Section 3.11, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

...

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. ~~The Architect's Requests from Contractor for clarification or information shall clearly define the cause(s) of Contractor's request and, as appropriate, shall include Contractor's interpretation and Contractor's proposed solution. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.~~

#### PAGE 26

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

...

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the~~



proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such ~~change change, if any,~~ unless the Contractor has acted promptly and responsively in submitting names as required.

...

§ 5.2.5 Each Contractor, Subcontractor, and Sub-Subcontractor shall be required to completely familiarize themselves with the plans and specifications, to visit the Work site to complete familiarize themselves with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sums shall be allowed for failure to so inspect and investigate.

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

§ 5.3.2 All agreements between the Contractor and Subcontractors shall state be in writing that the Owner "is an intended third-party beneficiary of this Contract." Consistent with third-party beneficiary status, neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors and Sub-Subcontractors.

## PAGE 27

- .1 ~~assignment~~ assignments is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and



- .2 ~~assignment~~ assignments is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

...

(Paragraph deleted)

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

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

§5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

...

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. ~~If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.~~ site.

## PAGE 28

§ 7.1.4 Allowance balances may be used to fund changes in the Work. The total fee of the Contractor shall be reconciled with the final balances for Allowances and Contingency line items to ultimately ensure that the final Contractor's Fee is a multiplier of the actual cost of the Work covered by the Allowance and Contingency items.

...

.3 The extent of the adjustment, if any, in the Contract Time. Any Change Order which adjusts the Contract Time or the date of Substantial Completion must be signed, in addition to the foregoing, by an authorized representative of Wingate University, Blue Ridge Community College, and Henderson County Hospital Corporation.

§ 7.2.2 The Contractor stipulates that the acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.

§ 7.2.3 When changes in the Contract Sum, either additions or deductions, are based upon unit prices and/or allowances, the total fee of the Contractor shall be reconciled with the final cost of the Work to ensure that the final Contractor's Fee is the correct multiplier of the actual cost of the Work.

...

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

Time being adjusted accordingly. Any Construction Change Directive which adjusts the Contract Time or the date of Substantial Completion must be signed, in addition to the foregoing, by an authorized representative of Wingate University, Blue Ridge Community College, and Henderson County Hospital Corporation.

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§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. Shall Commence upon the last occurrence of all the following events: (a) Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, (b) the Owner's issuance of a Notice to Proceed, and (c) the receipt of all required construction permits.

§ 8.1.3 The date of Substantial Completion of the Project is the date certified by the Architect in accordance with Section 9.8. The date Final Completion for each phase of Work is the date certified by the Architect in accordance with Paragraph 9.10. Unless otherwise agreed in writing by the Owner, the Contractor agrees that each phase's Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

...

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

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

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

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; government action, fire, or by delay authorized in writing by the Owner or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. may be extended by Change Order to the extent such delay will prevent the Construction Manager from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, and would not have been delayed by any other cause for which the Construction Manager is not entitled to an extension in the Contract Time under the Contract Documents. The Construction Manager further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contract, (ii) could not be limited or avoided by the Construction Manager's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration of not less than one (1) day.

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§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Agreement does not permit the recovery by the Contractor of monetary damages, including, without limitation, extended home office overhead expenses, general

conditions, consequential damages, or other compensable damages for delay or disruption or for extensions of time due to bad weather or acts of God, unless caused solely by the Owner or its Agent. In the event that a delay, disruption or extension of time beyond the contract date for Substantial Completion is caused solely by the Owner or its Agent, then the Contractor may claim actual direct expenses that have only been incurred as a direct result thereof.

§ 8.3.4 Adverse weather conditions shall be defined as "weather extremes" (precipitation, temperature, and/or winds) which could not have been anticipated and which prohibit the type of construction activity scheduled during the time of adverse weather. Requests for extensions of Contract Time shall comply with section 15.3.7 herein.

§ 8.3.5 Contractor agrees that dates wlder the Contract will not be extended due to normal inclement weather. For a time extension to be granted for abnormal, inclement weather a) such weather must, in the opinion of the Architect and the Owner 's Representative, actually have an adverse effect upon the progress of the Contractor's work which is of a critical nature, and b) in the opinion of the Architect and the Owner 's Representative, the adverse effect must not be due to any fault or negligence of Contractor and could not have been avoided by the Contractor through proper planning, coordination and implementation of adequate weather protection necessary to allow the Work to be continued without adverse effect upon labor production. Contractor agrees that the fact that abnormal inclement weather may occur does not, by itself, justify any time extension.

§ 8.3.6 Failure on the Contractor 's part to submit a claim for adverse weather each month shall constitute a waiver of the claim for the month. The Construction Progress Schedule shall be updated each month that unanticipated adverse weather days accrue.

#### § 8.4 RESPONSIBILITY FOR COMPLETION

§ 8.4.1 The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations, Saturdays, Sundays and holidays, as may be necessary to ensure the progress and completion of the Work in accordance with the approved and then current updated Construction Progress Schedule. If work falls behind such schedule and if it becomes apparent from such schedule that the Work will not be completed within the Contract Time, the Contractor agrees that it shall, as necessary, take some or all of the following actions at no additional cost to the Owner, as required to substantially eliminate, in the judgment of the Architect, the backlog of work:

1. Increase manpower in quantities and crafts necessary;
2. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment, or any combination of the foregoing;
3. Reschedule activities as needed, including critical path activities where possible; and/or
4. Employ the services of a construction time management consultant to be approved by the Owner at Contractor 's sole cost and expense.
5. Use construction contingency to expedite work without increasing the GMP.

§ 8.4.2 The Architect may require the Contractor to submit a recovery schedule within a reasonable time set by the Architect demonstrating the Contractor 's program and proposed plan to make up the lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the Architect finds the proposed plan not acceptable, it may require the Contractor to submit a new plan. If the actions taken by the Contractor on the second proposed plan are not satisfactory, the Architect may require the Contractor to take any of the actions set forth in this Section 8.4, including use of construction contingency, without additional cost to the Owner, to make up the lag in scheduled progress.

§ 8.4.3 Failure of the Contractor to comply with the requirements of this section 8.4 may be considered grounds for determination by the Owner that the Contractor is failing to prosecute the Work with sufficient diligence to ensure its completion within the Contract Time.

§ 8.4.4 Damages for the delay shall be assessed against the various contractors regardless of their

respective degrees of responsibility for the delay in the event that work is delayed beyond the Contract Times. Therefore, the Contractor and Owner agree that for each day of delay in excess of the Contract Times for construction, each Contractor shall pay to the Owner the sum of one thousand dollars (\$1,000) per day related to Substantial Completion and five hundred dollars (\$500) per day related to Final Completion as liquidated damages, not as a penalty, reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the Contractors to complete the Work within the Contract Times, such time being of the essence of the Contract and a material consideration thereof.

Furthermore, the Owner may, upon recommendation of the Architect and upon written notice to the Contractors, withhold from the Contractors monthly pay requests up to the sum of five hundred dollars (\$500) per day for each day that the Project is determined to be behind schedule at any time that the Project has remained behind schedule for more than thirty days. Said damages shall be withheld until such time as it is determined that the Project is back on schedule and may be applied to satisfy in whole or part any final amount of liquidated damages assessed against the Assessment of liquidated damages is not subject to the provisions of Article 15.

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**§ 9.3.1** ~~At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.~~ The monthly Application for Payment shall be submitted by the Contractor so it will be received by the Architect not later than the last day of the month. The Architect will submit Applications for Payment that are approved to the Owner by the fifth (5) of the following month, and the Owner will make payment to the Contractor by the 15<sup>th</sup> of that month. The Applications for Payment for operations completed shall be in accordance with the Schedule of Values.

Each copy of the Contractor's monthly Application for Payment shall bear the following certification over the Contractor's signature:

I hereby certify that the labor and material listed on this statement have been used in the construction of this work and that all material included in this statement and not yet incorporated into the construction is stored on the site or off site in accordance with the terms of the Contract Documents and that the material is protected and insured as specified and that all such labor and material have been paid for in full.

Payments will be made on the basis of ninety-five percent (95%) of approved monthly applications. When the Owner has received the Architect's final Certificate for Payment and the Owner, the Architect and all regulatory agencies have formally accepted all of the work, final payment will be made within thirty (30) days thereafter.

When work under the Contract is fifty percent (50%) complete and if satisfactory progress is being made, and subject to approval of the Architect and the Contractor's Surety, the Owner may make remaining monthly payments in full. "Satisfactory progress" Under this section, includes but is not limited to, the duty of the Contractor to fully correct all Work that has been identified in writing as "nonconforming" by the Architect, Owner or Engineer. Such corrective Work must be accepted by the Architect, Owner or Engineer.

The full Contract retainage may be reinstated if the manner and progress of the Work does not remain satisfactory to the Architect and Owner and to the extent necessary (not to exceed 5% at any one time) to enable the Owner to retain 2.5% total retainage through final completion. In addition to the provisions of this section, the Owner retains the right to withhold payment for Unsatisfactory job progress, defective construction not remedied, disputed work, or third-party



claims filed against the owner or reasonable evidence that a third-party claim will be filed.

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**§ 9.3.2** ~~Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and~~ § 9.3.2 Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specified materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and the Architect's expenses related to visiting the off-site storage area and reviewing the stored contents.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon compliance by the Contractor with submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for such materials and equipment stored off the site; those materials and equipment delivered to the Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until such materials and equipment are incorporated into the Work.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR SUBCONTRACTORS, SUB-SUBCONTRACTORS, MATERIAL SUPPLIERS OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR, SUBCONTRACTOR, OR SUB-SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

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**§ 9.4.1** The Architect will, within ~~seven-five~~ five days after receipt of the ~~Contractor's~~ Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section ~~9.5.1-9.5.1.~~

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and evaluation of the Work and the data comprising the Application for Payment, that, to the best of the ~~Architect's~~ Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further



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

...

- .7 repeated failure-failures to carry out the Work in accordance with the Contract Documents.
- .8 liens or claims of liens with respect to any portion of  
the work; or
- .9 failure to submit a written plan indicating action by the Contractor to restore, keep or  
maintain the Work on schedule for completion of Work within the Contract Time.

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§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under the Contract Documents, then the Architect may withhold any further Certificate for Payment to the Contractor to the extent necessary to preserve sufficient funds to complete construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reasons of withholding payment as provided for in Sections 9.3.2, 9.5.1 or this Section.

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall notify the Contractor within twenty-one days if the Owner disputes the Architect's Certificate for Payment or the Contractor's Payment Application, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or the Surety from any obligations under the Contract Documents or the Performance and Payment Bonds.

...

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

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

...

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

~~on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.~~

~~§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. Contractor shall achieve Final Completion of each phase of the Work within thirty (30) days after the date of Substantial Completion for each phase.~~

...

~~§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.~~

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In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- .1 Written certifications required by Sections 10.5, 10.6, and 10.7;
- .2 Final list of Subcontractors (AIA Document G705);
- .3 Warranties, organized as required elsewhere in the Contract Documents;
- .4 Maintenance and Instruction Manuals;
- .5 The Owner's Final Completion Certificate; and
- .6 Record drawings and "as-built" drawings. At the completion of the Project, the Contractor shall submit one complete set of "as-built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items. The Contractor shall submit these as electronic, sepi, or other acceptable medium, in the discretion of the Owner.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment shall be paid by the Owner to the Contractor within thirty (30) days after the Owner's Board has voted to approve Final Payment.

~~§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~

- ~~.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~
- ~~.2 failure of the Work to comply with the requirements of the Contract Documents; or~~
- ~~.3 terms of special warranties required by the Contract Documents.~~

~~(Paragraph deleted)~~

...

§ 10.1.1 The Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for those acts any of them may be liable, shall not perform any service for the Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages or any controlled substance while on the Owner's premises. No person shall use, possess, distribute or sell illicit drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on the Owner's premises.

§ 10.1.2 The Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on the Owner's premises or performing the Work. The Contractor will remove any of its employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. The Owner has the right to require the Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies as a result of a for-cause-test, conducted immediately following removal that said person was in compliance with this Section. The Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

§ 10.1.3 The Contractor will comply with all applicable federal, state and local drug and alcohol-related laws and regulations (e.g. Department of Transportation regulations, Drug-Free Workplace Act). The Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a concealed weapon, and the Contractor agrees that the Contractor's representatives, employees, agents, Subcontractors and Sub-Subcontractors will abide by same.

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- .3 other ~~property~~ properties at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

...

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Construction Manager shall also be responsible, at the Construction Manager's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Construction Manager.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel~~ personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to the Owner and the Architect. The storage of explosives other than small explosive charges for nail or rivet guns on the Owner's property is prohibited. The use of explosive materials on the Owner's property other than small explosive charges for nail or rivet guns is prohibited unless expressly approved in advance in writing by the Owner and the Architect.

§ 10.2.5 The Contractor shall promptly remedy damage and loss ~~(other than damage or loss insured under property insurance required by the Contract Documents)~~ to property referred to in Sections 10.2.1.2 and 10.2.1.3-10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a ~~Sub-subcontractor~~, Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2-10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be

liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the ~~Contractor's~~ Contractor's obligations under Section 3.18.

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§ 10.2.9 The Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injury, or serious property damage is caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect

...

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner ~~shall~~ may obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall In the event that hazardous materials are found to be present, the Contract Time may be extended appropriately and the Contract Sum shall may be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, start up by change order or, in the absence of agreement to a change order, at the direction of the Architect.

...

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances, and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1.

*(Paragraphs deleted)*

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

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

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### § 10.5 ASBESTOS OR ASBESTOS CONTAINING MATERIALS

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Prior to payment of retainage and final payment, the Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of the Work contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found in the Work in concentrations greater than 0.1 fibers per cubic centimeter then the Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Work, at no additional cost to the Owner. The written certification shall be dated, shall reference the specific Work and shall be signed by an officer of the Contractor.

#### **§ 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM**

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each Subcontractor involved with the potable water system shall furnish a written certification that the potable water system installed as a part of the Work is "lead-free".

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this work, then the Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Work, at no additional cost to the Owner. The written certificate shall be dated, shall reference the specific Work and shall be signed by an officer of the Contractor.

#### **§ 10.7 HAZARDOUS MATERIALS CERTIFICATION**

The Contractor shall provide written certification that no materials used in the Work contain lead, asbestos, volatile organic compounds, formaldehyde, or other hazardous materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (SHA) standards, whichever is most restrictive. The Contractor shall provide this written certificate as part of submittals under the Section in the Project Manual related to Contract Closeout.

The following requirements modify the requirements of Article 11 of the General Conditions: The Contractor shall not commence work under the Contract until it has obtained all insurance required under this Article or as required by law, and until such insurance has been approved by the Owner. The Contractor shall not allow any grading and site work, roofing, mechanical, plumbing or electrical Subcontractor(s) to commence work until all similar insurance as specified in this Article has been so obtained and the Contractor has presented the Owner with a Certificate of Insurance evidencing such coverage. Prior to the commencement of any work, the Contractor shall require all other Subcontractors and any Sub-Subcontractors to provide insurance coverage as required by law and as reasonably necessary given the scope of the Subcontractor or Sub-Subcontractor's work. The Contractor shall present the Owner with a Certificate of insurance evidencing such coverage. All Certificates of insurance must be on Acord Form 25 or later version as approved by the North Carolina Department of insurance.

#### **PAGE 41**

Contractor's Liability Insurance shall include all major divisions of the Work and be on a comprehensive basis including:

- a) Premises/operations (including explosion, collapse and underground as applicable).
- b) Independent Contractor's and Owner's and Contractor's Protective.
- c) Products and completed operations.
- d) Personal injury liability with employment exclusion deleted.
- e) Owned, non-owned and hired motor vehicles.
- f) Broad form property damage including completed operations.
- g) Any and all liability by way of indemnification, contribution and contractual liability.

#### **§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability**

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specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, ~~whether which shall be written on an occurrence or claims-made basis~~, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

**§ 11.1.2.1** The insurance required by section 11.1.1 shall be written for not less than the following limits, or greater if required by law:

**1. Worker's Compensation:**

- a. State Statutory
- b. Applicable Federal Statutory
- c. Employer's Liability
  - i. \$100,000 Each Accident
  - ii. \$1,000,000 Disease, Policy, Limit
  - iii. \$100,000 Disease, Each Employee

**2. Commercial General Liability (including premises/operations, independent contractors, products and completed operations):**

- a. Bodily Injury & Property Damage (combine single limit):
  - \$1,000,000 Each Occurrence
  - \$2,000,000 Annual Aggregate
- b. Products and completed operation to be maintained for one (1) after final payment.

**3. Contractual Liability (Hold Harmless Coverage):**

- a. Bodily Injury & Property Damage (combined single limit):
  - \$1,000,000 Each Occurrence
  - \$2,000,000 Annual Aggregate

**4. Personal Injury, with employment exclusion deleted:**

- \$1,000,000 Annual Aggregate

**5. Comprehensive Automotive Liability (owned, non-owned and hired):**

- a. Bodily Injury & Property Damage (combine single limit):
  - \$1,000,000 Each Accident

**6. Excess Liability (umbrella): Minimum Limits**

- a. \$2,000,00 Over Primary Insurance
- Policies must follow the form of the base policies

**7. Owner's Protective Liability Insurance:** The Contractor shall purchase and maintain owner's protective liability insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract Documents. Limit of coverage required for this insurance shall be not less than \$1,000,00 combined single limit.

**8. Builder's Risk Insurance:**

The Contractor shall effect and maintain all ISO Special Causes of Loss perils, including peril of transit upon the entire Project on which the Work is to be done, to one hundred percent (100%) of the insurable value thereof, including but not limited to, items of labor and materials connected therewith, whether in or adjacent to the structure insured; materials in place or to be used as part of or in the construction of the permanent construction, including but not limited to, surplus materials, shanties, protective fences, bridges, and temporary structures; miscellaneous materials and supplies incidental to the Work; and such scaffolding, staging, towers, forms, and equipment as are not owned or rented by the Contractor, the cost of which is included in the cost of the Work.

Such insurance must be maintained in full until Final Completion of the Project and, prior to canceling such insurance, Contractor shall notify Owner in writing.

Exclusions: This insurance need not cover: any tools owned by the mechanics; and tools, equipment, scaffolding, staging, towers, and forms rented or owned by the Contractor, the capital value of which is not included in the Work; or any structures erected for housing of or service to workmen.

A loss, if any, is to be adjusted with the Owner, and is to be payable to the Owner and to the Contractor jointly, as their interests may appear. The Owner shall be named on the policy, by rider or other applicable endorsement as an additional insured.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. insurance: No later than the date of the execution of the Contract, the Contractor will submit to the Owner four (4) copies of Certificates of insurance on the latest approved North Carolina Department of insurance Acord Form 25 by an insurer authorized to do business in North Carolina by the North Carolina Department of Insurance and rated A- (minus) or better by A.M. Best Company. The certificates shall certify that the insurance policies carried by Contractor were in force before the Work commenced and certifying that these policies include endorsements issued by the insurer stating that the applicable insurance will not be canceled during the Contract other than by an endorsement added to the policies and certificates reading substantially as follows: 'The policies herein referred to me not cancelable or subject to reduction of coverage by the Insurer unless the Owner has received thirty (30) days written notice via registered or certified letter.' Additional Certificates of insurances will be provided, from time to time, as listed policies expire in order to evidence continuance insurance coverage from the date of the Contract through the end of the one (1) year correction period following the date of Final Completion. Certificates of Insurance containing disclaimers holding the insurer harmless for failure to notify the Owner of Contractor policy cancellations will not be acceptable and should be modified to delete such disclaimers from the Insurance Certificate forms. Evidence of insurance requirements of these Supplementary General Conditions may be provided by modifications to Acord Form 25 by endorsement, rider or separate certification by the insurer. No surplus lines insurance shall be acceptable.

In preparation of these forms, the following items should read:

1. The description of the Project/ the Work/operations/locations/vehicles/special items.
2. The certificate holder is:

County of Henderson  
1 Historic Courthouse Square, Suite 5  
Hendersonville, North Carolina 28792

3. The cancellation statement is:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO THE CERTIFICATE HOLDER

NAMED TO THE LEFT.

All blanks and questions on certificates must be filled out completely. Incomplete or inadequate certificates will be returned to Contractor as unsatisfactory and commencement of its Work will be delayed until satisfactory certificates are submitted. Such delay will not warrant extension of the Contract Time. In the event of a reduction in any aggregate limit, the Contractor shall take immediate steps to have it reinstated. All insurance coverages of the Contractor shall be primary to any insurance or self-insurance program carried by the Owner. Renewal Certificates of Insurance on the Owner's form must be provided to the Owner thirty (30) days prior to expiration of current coverages so that there shall be no interruption in the Work due to lack of proof of insurance coverages required of the Contractor in the Contract Documents.

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§ 11.1.5 The acceptance of delivery to the Owner of any Certificate of Insurance evidencing the insurance coverages and limits required in the Contract does not constitute approval or agreement by the Owner that the insurance requirements in the Contract have been met or that the insurance policies shown in the Certificates of insurance are in compliance with the Contract requirements.

§ 11.1.6 Should at any time the Contractor not maintain the insurance coverages required of it in the Contract Documents, the Owner may either cancel or suspend the Contract or, at its sole discretion, shall be authorized to purchase such coverage and charge the Contractor for such coverages purchased. The Owner shall be under no obligation to (1) purchase such insurance, (2) be responsible for the coverages purchased, or (3) be responsible for the insurance companies used. The decision of the Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under the Contract Documents.

§ 11.1.7 If any General Liability Insurance required herein is to be issued or renewed on a "claims made" form as opposed to the "occurrence" form, the retroactive date for coverages shall be no later than the commencement date of the Project and shall provide that in the event of cancellation or non-renewal the discovery period of insurance claims shall be unlimited.

§ 11.1.8 All policies described in this paragraph 11.1 shall be made available to the Owner or its legal representatives by means of exact copies of the original policies and placed in the hands of the Owner or its representatives.

§ 11.1.9 If requested in writing by any party in interest, the Contractor shall, upon occurrence of loss, furnish bond for the proper performance of its duties. The Contractor shall deposit any money received from insurance in an account separate from all its other funds; and it shall distribute it in accordance with such agreement as the parties of interest may reach, or in the absence of such an agreement, as the interest of the parties may appear. Replacement of injured work shall be performed by the Contractor.

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*(Paragraphs deleted)*

#### **§ 11.3 PROPERTY INSURANCE**

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered,

whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.3.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.3.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### **§ 11.3.2 BOILER AND MACHINERY INSURANCE**

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### **§ 11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision



that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

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

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

...

**§ 11.4.3** The cost of the Bonds shall be included in the Contract Sum. The Bonds shall guarantee the Contractor's faithful performance of the Contract and the payment of all obligations arising thereunder. The Bonds shall remain in force until the later of the following has occurred:

- a. The Contract has been fully performed by the Contractor; and
- b. The Project has been completed and accepted by the Owner; and
- c. The provisions of all warranties and guarantees required by the Contract Documents have been fulfilled; and
- d. The time for the filing of all mechanics liens has expired; and
- e. The applicable North Carolina General Statute of repose has expired.

Bonds which seek to limit the time for bringing a suit to less than the foregoing are unacceptable



...

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

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

~~costs.~~

costs

...

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

§ 12.2.1.2 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. The Contractor shall be responsible to the Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

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§ 12.2.2.1 In addition to the Contractor's ~~obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents,~~ obligation to perform each phase of the Work in accordance with the Contract and in addition to all express and implied warranties, if, within one year after Substantial Completion of each phase of the Work, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so ~~unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.~~so. The Contractor will also present to the Owner an Alternate bid to include an additional one (1) year, for a total two (2) year, workmanship warranty related to the roofing system as detailed in section 3.5.3.  
(Paragraph deleted)

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

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work within thirty (30) days, then the Owner may perform corrective Work, at the Contractor's expense. If the Owner performs corrective Work, then the Owner may also remove nonconforming Work and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay all costs incurred by the Owner within ten (10) days after written notice, then the Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with the Owner's policies, and shall account for the

proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

(Paragraph deleted)

...

§ 12.2.6 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor and Sub-Subcontractors as well as Work done directly by employees of the Contractor.

...

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4, laws of The State of North Carolina and any litigation shall be conducted in the appropriate division of the General Course of Justice. Mandatory and exclusive venue for any disputes shall be in the county in which the Owner's main administrative office is located. The invalidity of any part or provision of the Contract shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract.

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Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. The owner shall pay prime interest rate as published for such date in the Wall Street Journal."

...

§ 13.7.1 The Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, or other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by the Contractor for at least seven (7) years after the date of Final Completion of the Project. Within thirty (30) days of the Owner's request, the Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, the Architect or their respective representatives, at the Owner's central office

#### **§ 13.8 EQUAL OPPORTUNITY**

§ 13.8.1 The Contractor and all subcontractors shall not discriminate against any employee or applicant for employment because of handicap, race, religion, color, sex, national origin, or age. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their handicap, race, religion, color, sex, national origin, or age. Such actions shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth its policies of non-discrimination.

§13.9 As a condition of payment for services rendered, Construction Manager must comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Construction Manager shall further require all Subcontractors to comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Construction Manager shall verify, by affidavit, compliance of the terms of this section upon request by the Owner.

§ 13.8.2 The Contractor and all subcontractors shall, in all solicitations or advertisements for employees

placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to handicap, race, religion, color, sex, national origin, or age.

§ 13.8.3 The Contractor shall further initiate and maintain policies to ensure minority business enterprise participation in the Work in accordance with the provisions of the "Minority Business Participation Policy" as promulgated by the Henderson County Board.

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30-90~~ consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than ~~100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~ 120 days in any 365-day period.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and ~~Architect, Architect~~, terminate the Contract and recover from the Owner payment for Work ~~executed, executed~~, including reasonable overhead and ~~profit, profit~~, costs incurred by reason of such ~~termination, and damages.~~ termination.

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

...

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

...

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages ~~incurred-included~~ by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this.~~ This obligation for payment shall survive termination of the Contract. This Section 14.2.4 is in addition to and not in limitation of any other rights and remedies of the Owner.

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~~§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall~~ a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this section:

...

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- .4 proceed to complete the Work not terminated; and
- .5 take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

~~§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on~~ Upon each termination, the Contractor shall recover as its sole remedy payment 1) for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, 2) for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instruction, and 3) for profit on the Work not executed. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation overhead related to the Work not executed.

...

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

...

~~Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker Owner and with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party Architect. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes Contractor first knew or should have known of the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and the Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof. To the extent that the damages cannot be assessed at the time of the Notice, the Notice shall be amended at the earliest date reasonably possible. It is imperative that the Owner receive timely specific Notice of any potential problem identified by the Contractor in order that the problem can be mitigated or resolved promptly. Any alleged damages suffered by the Contractor that have not been included in a Notice within ninety (90) days after the Contractor first knew or should have known the damages shall be deemed waived by the Contractor.~~

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~~Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the~~



Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.~~The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.~~

...

If the Contractor wishes to make a Claim for additional cost or an increase in the Contract Sum, GMP, written notice as provided herein shall be given ~~before proceeding to execute the Work, to the Owner and the Architect.~~ Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such claim and report findings and a recommended resolution in writing to the Owner and the Contractor. If the Claim is approved by the Board or the Owner's Representative, then the Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then the Contractor may pursue alternative dispute resolutions provided for in the Contract Documents.

...

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

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and ~~had an adverse effect on the scheduled construction.~~ prevented the execution of critical path elements of the Work on normal working days. Adverse weather conditions mean unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year.

**§ 15.1.5.3** The Contractor shall anticipate and include in a critical path construction schedule rain day due to adverse weather conditions in accordance with the average rainfall expected for the locality and/or the month in question. A rain day is defined as a day when rainfall exceeds one-quarter (0.25) inch from project inception to building dry-in and one-half (0.50) inch post building dry-in during a 24-hour period.

**§ 15.1.5.4** Time extensions may be granted for rain days in any month when the cumulative number of rain days during that month exceeds the number scheduled, provided that the rainfall prevented the execution of the critical path of the Work on normal working days as shown on the Contractor's schedule. No day will be counted as a rain day when substantial forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the critical path of the Work on the Project is not adversely impacted.

**§ 15.1.5.5** No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of the Contractor or the Contractor's Subcontractors or Sub-Subcontractors or under the Contractor's control. Claims for extension of time may only be considered because of adverse weather conditions, rain delays, or hindrances or delays which are the fault of the Owner and/or under the Owner's control, but only to the extent that the critical path of the Work is delayed. Other claims for extension of time shall be considered because of hindrances or delays not the fault of either the Contractor or the Owner, but only to the extent that the critical path of the Work is delayed. Board approval shall be required for any extension of time. No damages shall be paid for delays. The Contractor shall only be entitled to time extensions per the terms of the Contract Documents

**§ 15.1.5.6** Requests for time extension shall be submitted on a monthly basis and shall specify the time delay, the cause of the delay, and the responsible party for the delay, whether the Contractor, the Owner, adverse weather, rain day, or other. No claims for damages for delay shall be made by the Contractor. Any claim not submitted under the terms of this Section shall be waived.



~~The Contractor and Owner waive Claims Except to the extent covered by the valid and collectible insurance required respectively to be carried by Construction Manager or Owner under Article 11, the Construction Manager and Owner waive all claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~.1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~.2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Contract; provided, however, that in no event shall this mutual waiver be deemed to preclude (i) an award of liquidated damages recoverable under this Agreement; (ii) the use of diminished income stream (or rents) in the calculation of "diminution of value" of the Work, in the event the Owner exercises its right under Section 12.3 to reduce the Contract Sum by an appropriate amount; or (iii) the obligation of the Construction Manager to reimburse the Owner for any fines from government entities or additional costs and expenses for the Architect or other consultants, or separate contractors, arising out of any act or omission of the Construction Manager.~~

#### **§ 15.2 INITIAL DECISION**

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

#### **§ 15.2 RESOLUTION OF CLAIMS AND DISPUTES**

~~§ 15.2.1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.~~

~~§ 15.2.2 The Initial Decision Maker Architect will review Claims and within ten (10) days of the receipt of a the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim. Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.~~

~~§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~

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

~~receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

§ 15.2.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in making a written recommendation.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of such a request, and shall provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution. As required by North Carolina General Statute Section 143-128(f)1, the Owner, the Contractor, the Architect and all first-tier and lower-tier Subcontractors and Sub-Subcontractors are required to participate in mediation as a precondition to initiating litigation. The dispute resolution process adopted by the State Building Commission pursuant to North Carolina General Statute Section 143-135.26(11) is hereby adopted and incorporated by reference for use in conducting the mediation. Statutory, contract, bond, insurance, warranty and all other time periods (including but not limited to applicable statutes of limitation and statutes of repose) shall be tolled (suspended from running) during the mediation process. The costs of the mediation shall be paid one-third by the Owner and two-thirds by the other party or parties to the mediation, divided equally among the other parties if there is more than one other party.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

*(Paragraphs deleted)*

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

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

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

### **§ 15.3 MEDIATION/LITIGATION**

§ 15.3.1 Claims, disputes, or other matters in controversy Any Claim arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution. Contract, except Claims waived under the terms of the Contract Documents, shall, subject to the provisions of Section 15.2.5, be subject to resolution by litigation.

*(Paragraphs deleted)*

~~§ 15.3.2~~ The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 15.3.3~~ The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## **~~§ 15.4 ARBITRATION~~**

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

## **~~§ 15.4.4 CONSOLIDATION OR JOINDER~~**

~~§ 15.4.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 15.4.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

## **§ 16 GENERAL**

§ 16.1 These General Conditions and the General Requirements, the original Request for CM at Risk Qualifications, the forms of various required documents, and any Special Conditions, modify and amend AIA Document A 133-2009, entitled "Standard Form of Agreement Between Owner and Construction Manager as Constructor," and AIA Document A701-1997, entitled "Instructions to Bidders,".

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~



## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, Chad Webb, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:41:07 on 07/15/2016 under Order No. 0320449720\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*