



ADDENDUM NO. 01

Client / Facility: Onslow Memorial Hospital	TEG Project No.: 20190152
Project Name: Second Floor Refurbishment	Client Project No.:
Addendum Date: October 20, 2020	For Bids Due On: October 23, 2020

Corporate Office
 324 Evans St
 Greenville
 NC 27858
Tel 252.758.3746
Fax 252.830.3954

Raleigh Office
 4325 Lake Boone Trail
 Suite 311
 Raleigh
 NC 27607
Tel 919.784.9330
Fax 252.830.3954

www.eastgroup.com

This Addendum has become a part of the drawings and specifications for the above project.

Each Contractor shall be responsible for notifying their subcontractors and material suppliers of the contents of this Addendum.

Revised or newly issued specifications contained in this Addendum shall supersede and shall take precedence over any conflicting information in the original specifications.

Each Contractor shall bear all expenses resulting from the use of substitutions which may be included in this Addendum including the cost of work in general, structural, fire protection, plumbing, mechanical, and electrical trades required due to the substitution and the cost of any Architect's services made necessary by the substitution.

Project Manual / Specifications:

- Section 00797:** Section 8.4 "Liquidated damages" has been deleted. There will be no liquidated damages on this project.

Clarifications & Answers to Questions:

- Question: What type of fire alarm is at Onslow Memorial?
 Answer: The fire alarm system is Notifier by Honeywell.
- Question: Specification section 09656-3, 2.2-A calls for pre-fabricated flash cove base. Please clarify if field fabricated flash cove is acceptable.
 Answer: Field fabricated flash cove is not acceptable. Please provide flash cove base as specified.
- Question: Can you please clarify if the SSM cap is to go everywhere that is called for HIWC 1?
 Answer: SSM Cap is required everywhere HIWC-1 is shown (i.e. patient rooms).
- Question: Please clarify the scope of work in the corridors for the existing wallpaper and if priming and level 5 finish is required.
 Answer: Removal of the existing wallpaper and skimming the walls to a level 5 finish is required.

END OF ADDENDUM NO. 01

ENGINEERING
 -
ARCHITECTURE
 -
SURVEYING
 -
TECHNOLOGY
 -

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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, Project Manual, Pre-Bid Meeting Minutes, Specifications, Addenda issued prior to execution of the Contract, any 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 or a Change Proposal Request, (3) a Construction Change Directive or (4) a clarification, interpretation or a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.1.1 THE CONTRACTOR'S BID SHALL BE PART OF THE CONTRACT DOCUMENTS.

§ 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 and Owner shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Owner's and 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. Work includes providing supplementary or miscellaneous items, appurtenances and devices incidental to or necessary for a sound, secure, complete and functional installation even though not indicated in the Contract Documents

§ 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, diagrams, and notes, etc. Mechanical, Plumbing, and Electrical Drawings are diagrammatic only. Actual work shall be installed consistent with measurements obtained at the job-site, shall be coordinated with other trades as necessary, and shall be consistent with shop drawings, coordination drawings and manufacturer's published requirements.

§ 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 THE PROJECT MANUAL

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

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§ 1.1.8 FURNISH:

Unless specifically limited in context, the word “furnish” and any derivatives thereof, mean; furnishing to Project site items specified, materials, equipment apparatus, appurtenances, and all items necessary.

§ 1.1.9 INSTALL:

The word “install” and any derivatives thereof mean; incorporating in the Work including all necessary labor, materials, and connections to perform and properly complete in place, ready for operation or use, including unpacking and assembly if necessary.

§ 1.1.10 PROVIDE:

The word “provide” and any derivatives thereof mean; furnish and install as defined above.

§ 1.1.11 THE CONTRACTOR SHALL:

In interest of conciseness, sentences, statements, and clauses used may exclude any form of verb “shall” normally expressed in verb phrase with verbs such as “furnish”, “install”, “provide”, “perform”, “construct”, “erect”, “comply”, “apply”, “submit”, etc. Any such sentences, statements, and clauses are to be interpreted to include applicable form of phrase “the Contractor shall” and requirements described therein interpreted as mandatory elements of Contract.

§ 1.1.12 EVALUATION:

The word “evaluation” and any derivative thereof, as used in reference to Architect mean; to become generally familiar with the progress and quality of the portion of Work completed to determine in general if it is being performed in a manner indicating that the Work when completed may be occupied or utilized by the Owner for its intended use.

§ 1.1.13 INSPECT:

The word “inspect” and any derivative thereof, as used in reference to the Architect shall mean the type of evaluation that a reasonably prudent architect exercising ordinary professional skill and care on similar Projects would make to determine if the Work is in general accordance with the Contract Documents.

§ 1.1.14 SEE:

In interest of conciseness, references to specification sections and details are preceded by the word “see”. Any such references are to be interpreted to include applicable form of phrase “, and comply with”.

§ 1.1.15 INDICATED and SHOWN:

The word “indicated” or “shown” and any derivative thereof shall mean as detailed, scheduled, schematically depicted or stated in Contract Documents.

§ 1.1.16 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.

§ 1.1.17 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 4.3 and certify termination of the Agreement under Section 14.2.2.

§ 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 to the extent consistent with the Contract Documents and reasonably inferable from them. All work shall conform to the Contract Documents. No change there from shall be made without prior written authorization by the Owner. Where only part of the Work is indicated, similar parts shall be considered

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repetition. When any detail is shown and the components therefore are fully described, similar details shall be construed to require the same materials and construction. Whenever there are discrepancies between Drawings, or between the Drawings and Specifications, or conflicts within the Specifications, the Contractor shall furnish and install the better quality or greater quantity unless otherwise ordered in writing. Items required by either the Drawings or the Specifications and not mentioned in the other shall be of like effect as if shown or mentioned in both. Should the Specifications and Drawings fail to particularly describe a product or material shown to be used in any place, subject to the Architect's approval, the Contractor shall furnish the product that would normally be used in this place to produce first quality finished work.

§ 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, nor to limit the scope of work performed by any trade or by any Subcontractor or supplier, unless the Work is indicated in the Instructions to Bidders to be accomplished under two or more prime contracts in lieu of a single prime contract. Such separations shall not operate to make the Architect an arbiter to establish limits of work between Subcontractors or between Contractor and Subcontractor.

§ 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 General Conditions of the Contract, and General Requirements apply to all specifications.

§ 1.2.5 References to "match existing" in Contract Documents refer to existing finishes, materials and qualities which have been used in adjacent portions of existing facilities.

§ 1.2.6 Material designations or details not specifically shown shall either match existing or be similar in finish, material or quality to similar adjacent conditions.

§ 1.2.7 Any inconsistency in the Contract Documents shall be resolved by giving precedence in the following order: (A) the Owner/Contractor Agreement, (B) the General Conditions, (C) Division 1 General Requirements, (D) the Drawings and Technical Specifications, and (E) the Bidding Documents consisting of the Notice to Bidders and Instructions to Bidders.

§ 1.2.8 Where items are specified by the use of a reference standard, the date of the reference standard shall be the latest edition published on the date the Agreement is executed unless a specific edition is referenced in the Specifications or in an applicable code, in which case the specific referenced edition shall govern.

§ 1.2.9 Materials which are shown on the drawings and which may not be specifically described in the Specifications or on the Drawings shall be furnished by the Contractor, shall be suitable for the intended use, and shall be subject to review for conformance with the intent of the Contract Documents. Where installation techniques are not specified, they shall be in accordance with the manufacturer's current instructions and industry standards.

§ 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.

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§1.5 EXECUTION OF CONTRACT DOCUMENTS

§1.5.1 The Contract Documents shall include and be enumerated on in or on attachment(s) to the Agreement, and any attachment(s) shall be signed by the Owner and Contractor.

§1.5.2 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.

§1.5.3 By executing the Contract, the Contractor represents he has reviewed all Contract Documents and the cost of all materials and equipment shown or indicated in the Contract Documents have been included in the Contract Sum and that all costs for materials and labor associated with the installation of such equipment have been included in the Contract Sum.

§1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and/or the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated and any rights of the Owner, the Architect and/or the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request of the Owner or Architect, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier 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/or the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and/or the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and/or the Architect's consultants. 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' copyrights or other reserved rights.

§ 1.6.1.1 If required to be furnished or if furnished, Architect or Architect's Consultants shall furnish electronic data in software format in use by Architect at the time Architect's services are performed. Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers, or others shall be responsible for proper storage, maintenance and conversions necessary to prevent degradation or obsolescence of data. Any change or modification in electronic data by Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers, or others shall be at their sole risk and without liability or legal exposure to Architect, Architect's consultants or Owner, and to fullest extent permitted by law, the Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers agrees to hold harmless and indemnify Architect, Architect's consultants and Owner from and against all claims, liabilities, losses, damages, and costs, including but not limited to reasonable attorney's fees, arising there from or in connection therewith.

§ 1.6.1.2 The Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers, and others understands that the conversion of electronic information and data supplied by the Architect or Architect's consultants from the system and format used by the Architect or Architect's consultants to an alternative or upgraded system or format, whether performed by Architect, Architect's consultants or others, cannot be accomplished without the introduction of inexactitudes, anomalies, omissions and errors.

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In consideration of the Architect's agreement to deliver electronic data, the Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers, and others agrees to hold Architect, Architect's consultants and Owner harmless and to waive any and all claims, liabilities, losses, damages, and costs arising out of or in any way connected with the conversion of electronic data supplied by the Architect or Architect's consultants.

§ 1.6.1.3 If documents, including those in electronic form, are modified, revised or changes in any way by the Contractor, Subcontractor, Sub-subcontractor, and material and equipment supplier, or others, any reference to the Architect and Architect's consultant, and any professional seals and signatures shall be removed from the documents.

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

§ 1.7 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 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 may 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.

§ 2.1.1.1 Owner as referred to in these documents is: Onslow Memorial Hospital, Jacksonville, NC.

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

§ 2.1.3 Provided however, if required by the Owner's title insurer, lender or in connection with bond indebtedness, the Contractor shall execute a subordination agreement in form and substance satisfactory to such entities.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7, 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.

§ 2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and known utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall be responsible for verification of exact utility locations. The accuracy of grades, elevations, dimensions or locations of existing conditions is not guaranteed by the Architect or Owner, and the Contractor is responsible for verifying such items.

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§ 2.2.3 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness, and complete and accurate to the best of the Owner's information and belief. 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.

§ 2.2.4 Contractor will be furnished, free of charge, one set of reproducible Drawings and one copy of the Project Manual which the Contractor may use for the limited purpose of making copies thereof required for use in performance of Work, in accordance with Paragraph 1.6.

§ 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, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner 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 or Construction Change Directive, 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.

§ 2.4.1 Neither Owner nor its officers, agents, or employees are in any way liable or accountable to Contractor or its Surety, if any, for method by which completion of said work, or any portion thereof, is accomplished or for price paid therefore, unless Surety is required to pay cost to complete the Project, in excess of the amount contained in the Owner-Contractor Agreement, as a direct result of the Architect's negligent issuance of Certificate(s) for Payment. Contractor and Surety are responsible for all costs for completing the work including cost in excess of original contract price. Owner does not forfeit right to recover damages from Contractor or Surety for failure to complete contract by taking over the work or by declaring contract in default. Maintenance of the work remains Contractor's and Surety's responsibility as provided for in Performance Bond and guarantee of Contractor.

§ 2.4.2 The Owner reserves the right but not the obligation, to perform any work on the site, whether within or without the scope of the Contract, necessary to correct any conditions which at the sole discretion of the Owner pose a hazard to the health or safety of employees, visitors, or the general public. Such work will only be done on an emergency basis. If practical under the circumstances, the Contractor shall be given notice of any such conditions and given a reasonable opportunity to correct them. If work is done by the Owner pursuant to this paragraph which is necessitated by any act or failure to act of the Contractor, the costs associated with such work, including Owner's expenses and compensation for the Architect's additional services and expenses, shall be deducted from any sums due the Contractor and a written Change Order or Construction Change Directive, adjusting the contract sum will be issued. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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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 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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 properly prepared, timely request for information (RFI) 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 Contractor's request for information, interpretation, or clarification shall be made to Architect in writing on Request For Information (RFI) form furnished by Architect. Contractor to submit completed copy of form completely filled out with request clearly stated. Reference all applicable drawings by detail and Specifications by section and paragraph. RFIs to be numbered sequentially (1, 2, 3, 4, etc.). Architect will return a single copy to Contractor. Contractor will copy and distribute to all parties affected by response.

§ 3.2.4 Contractor accepts full responsibility for use of any information indicated in soil borings, test excavations and other subsurface investigations contained in reports provided in the bidding documents. The Contractor shall obtain at its own expense, any additional information necessary to perform the Work.

§ 3.2.5 In event of inconsistency between portions of Contract Documents or within Contract Documents; Contractor shall provide better quality or greater quantity of Work, or comply with more stringent requirement, either or both in accordance with Architect's interpretation.

§ 3.2.6 Contractor shall not make a claim, exceeding actual cost of work, if, in performing the Work, he finds actual subsurface conditions encountered which do not conform to those indicated by soil borings, test excavations, and other subsurface investigations.

§ 3.2.7 Contractor acknowledges that it has examined all documents pertaining to the Work, examined character of site and any existing structures, and has satisfied itself as to nature of the Work, and all other matters, which can in any way affect the Work.

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§ 3.2.8 The Contractor shall resolve all reported deficiencies with the Architect prior to awarding any subcontracts or starting any work with the Contractor's own employees. If any deficiencies cannot be resolved by the Contractor without additional time or additional expense, the Contractor shall so inform the Owner in writing. Any work performed prior to receipt of instructions from the Owner will be done at the Contractor's risk.

§ 3.2.9 The Contractor shall be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents the Contractor recognized or should have recognized and failed to report to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

§ 3.2.10 The following principles shall govern the settlement of disputes which may arise over discrepancies in the Contract Documents: (a) as between figures given on Drawings and the scaled measurements, the figures shall govern – no measurements shall be taken by scale as working dimensions except on large-scale Drawings not dimensioned in detail; (b) as between large-scale Drawings and small-scale Drawings, the larger scale shall govern; (c) as between Drawings and Specifications, requirements of the Specifications shall govern; and (d) as between the Agreement and the Specifications, requirements of the Agreement shall govern. The principles set forth herein shall not alter provisions of Article 1.2.

§ 3.2.11 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but 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. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, unless they bear upon construction means, methods, techniques or safety and health precautions, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

§ 3.2.12 If Contractor fails to give such notice and, knowingly, proceeds with Work affected by errors or omissions in the Contract Documents, he shall correct any such errors, inconsistencies, or omissions at no additional cost to Architect and Owner.

§ 3.2.13 If the Contractor believes that additional cost or time is involved because of clarifications, interpretations or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.11 the Contractor shall make Claims as provided in Section 4.3. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.11, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor should have recognized or recognized such error, , omission or difference and failed or knowingly failed to report it to the Architect.

§ 3.2.14 In the event any error, inconsistencies, omission, or discrepancy in or between drawings and specifications exists or appears to exist, the Contractor shall not attempt to profit from such unintentional error, inconsistencies, omission, or discrepancy.

§ 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.

§ 3.3.1.2 Any instructions that the Architect may issue to the Contractor shall be adjudged an interpretation of the requirements of the Contract Documents and not an act of supervision. The Architect has no authority and accepts no responsibility, either direct or implied, to direct and superintend the work.

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§ 3.3.1.3 Coordination drawings: See Division 1.

§ 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 Contractor is solely responsible for coordination of scope of Work of Subcontractors and Suppliers, and to complete all Work, whether performed by the Contractor or a Subcontractor.

§ 3.3.5 The Contractor shall employ Licensed Surveyor to locate and stake out the Work and establish necessary reference and bench marks. Work from established bench marks and reference points, lay out and correctly establish all lines, levels, grades and locations of all parts of their own Work and be responsible for their accuracy and proper correlation with Work and established data.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.1.1 Delivery, handling and storage of materials and equipment: See Division 1.

§ 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 if allowed by the Contract Documents and with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 Product options and substitutions after execution of contract: See Division 1.

§ 3.4.2.2 No substitutions of materials, products, or manufacturers will be considered under this Contract except under one or more of the following circumstances:

1. The substitution is required for compliance with subsequent interpretations of code or insurance requirements.
2. The specified product is unavailable through no fault of the Contractor.
3. The manufacturer or fabricator refuses to certify or guarantee the specified product as required.
4. Subsequent information reveals that the specified product is unable to perform properly or to fit in the designated space.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall insure that all product suppliers and Subcontractors, adhere to the Contract Documents and that they order products on time, taking into account the current market and delivery conditions, and that they provide products on time. The Contractor shall keep the Architect informed as to the availability of all specified materials and equipment and shall advise him promptly, in writing, of all material and equipment that may not be obtainable, or the availability of which may be delayed, whether due to conditions of the market or other limiting or governing factors beyond the Contractor's control.

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§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.1 Warranties and guarantees: See Division 1.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when Contractor's bids were received or negotiations between Owner and Contractor were concluded, whether or not yet effective or merely scheduled to go into effect. Contractor shall provide a sales tax report with each pay request, itemizing all state and local taxes paid for the period.

§ 3.6.2 Contractor shall pay all sales, consumer, use and other similar taxes on all material and equipment not purchased directly by Owner, which are legally enacted at time bids are received, whether or not yet effective.

§ 3.6.2.1 If the Contractor fails to submit a Sales Tax Report with each Application for Payment, the Owner will not pay such application until the required report is received by the Owner. Where no sales taxes have been paid for a particular month, a Sales Tax Report stating " No Taxes Paid" shall be submitted.

§ 3.6.3 Contractor shall require all Subcontractors, Sub-subcontractors and suppliers to bill Contractor for all sales and use taxes on all materials and equipment incorporated into Project as clearly discernible separate item to facilitate Contractor's keeping tax as separate item of expense on records. Furnish the tax information on the Owner's Sales Tax Report form provided in the Contract Documents, in order to enable Owner to meet state reporting requirements.

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

§ 3.7.1 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. A copy of the building permit and heating/ventilating/air-conditioning, plumbing, electrical and other trade permits required for the Project shall be submitted to the Architect with or prior to the first Application for Payment.

§ 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.

§ 3.7.2.1 If the Contractor fails to give such notices, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect, and their respective employees, officers and agents, against any resulting fines, penalties, judgments or damages, including reasonable attorney's fees, imposed on or incurred by the parties indemnified hereunder.

§ 3.7.2.2 The Contractor, his Subcontractors and all trades people working on the Project who are required by statute to be licensed shall have a current license in good standing before commencing any operations on the premises.

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§ 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, without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, including any fines or other damages realized.

§ 3.7.4 Upon completion of the Work, the Contractor shall deliver to the Owner and Architect original copies of all required final certificates of inspection, the Certificate of Occupancy, and other documents evidencing that inspections required by authorities having jurisdiction over the Work have been performed.

§ 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 Allowances; and
- .3 whenever costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order or Construction Change Directive. . The amount of the adjustment 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 in sufficient time to avoid delay in the Work.

§ 3.8.4 The amount due the Contractor for any Allowance shall be based upon certified copies of invoices from suppliers and Subcontractors and shall not include any costs provided for in Paragraph 3.8.2.2.

§ 3.8.5 Allowances: See Division 1.

§ 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 on the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Contractor's Project Manager and Superintendent shall be satisfactory to Owner and if requested in writing by Owner, shall be changed within 14 days.

§ 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.

§ 3.9.3 The Contractor shall not change the superintendent without the prior written consent of the Owner, which consent shall not be unreasonable withheld. The superintendent shall be present at the Project until final completion. At the Owner's request, the Contractor shall assign a different superintendent to the Project.

§ 3.9.4 As directed by the Architect, there is to be held a regularly scheduled meeting of the representatives of the various trades engaged about the Work, for furthering the progress of the Work and giving of clarifications by the Architect.. If the Contractor's representatives fail in attendance or in

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executing the instructions given them, they shall on request of the Owner be dismissed from the Work and other qualified representatives must be immediately substituted.

§ 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 be revised at monthly intervals or 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 construction schedule shall not be changed without the written consent of the Owner and Architect.

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

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

§ 3.10.4 Construction schedules: See Division 1.

§ 3.10.5 Progress Reports: See Division 1.

§ 3.10.6 The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to insure the progress and completion of the Work in accordance with the approved and currently updated progress schedule. Should the Contractor fail to start any activity on the start date shown in the Contractor's Construction Schedule, or otherwise become delayed, he shall, without being entitled to any increase in the Contract Sum or other compensation, work overtime, increase his work force, or take such other actions as may be necessary or appropriate to complete the activity by the Completion Date shown on the Construction Schedule, or as such activity's completion date may have been adjusted by a revised Construction Schedule prepared to reflect an agreed-to extension of the Contract Time and incorporated into the Contract by an appropriate Change Order or Change Order Directive.

§ 3.10.7 The Architect may require the Contractor to submit, within seven calendar days following receipt of written notice, a recovery schedule demonstrating this program and the Contractor's proposed plan to make up the lag in scheduled progress and to insure completion of the Work within the Contract Time. If the Architect finds the proposed plan not acceptable, he may require the Contractor to submit a new plan.

§ 3.10.8 Failure of the Contractor to substantially comply with the requirements of this Paragraph 3.10 may be considered grounds for a determination that the Contractor is failing to execute the Work with sufficient diligence to ensure its completion with the Contract Time.

§ 3.10.9 If the Contractor, without any fault on his part, is delayed in beginning any activity identified on the Progress Schedule he shall, nevertheless, have the same number of days as is shown in the Progress Schedule for the activity and the time for any succeeding activity that is dependent upon that activity shall be adjusted accordingly, provided that any time the Owner requires the Contractor to work overtime, to increase his forces, or to take any necessary or appropriate action to decrease the time required for any activity, the Contractor shall be entitled to an appropriate adjustment in the Contract Price.

§ 3.10.10 The Contractor shall provide any and all information with respect to the progress of the Work and scheduling as the Owner may reasonably require.

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§ 3.10.11 If the completion of the Work or any milestone date is delayed by any fault, neglect, act or failure to act on the part of the Contractor, the Contractor shall in addition to all other obligations, and at no cost or expense to the Owner, take such actions, including but not limited to, increasing manpower, work such overtime may be necessary to make up for all time lost and to avoid delay in the progress and the completion of the 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 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 shall be available to the Architect and shall be delivered to the Owner upon completion of the Work.

§ 3.11.1 Project record documents: See Division 1.

§ 3.11.2 The Contractor shall record on the record copy of the Drawings maintained at the site all changes and selections made during construction and shall locate by dimensions showing actual field measurements of all major items which will be concealed in the completed work. These items shall include underground piping and conduit beneath slabs-on-grade (or basement slabs), underground site utilities such as pipe, conduit, etc.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Submit samples requiring color or finish selection in a single, coordinated submittal. The Architect will not approve color or finish schedule until he has received all samples and other data necessary for making complete color selections for the Project.

§ 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 by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor shall sign each submittal and stamp with, "REVIEWED FOR COMPLIANCE WITH THE CONTRACT DOCUMENTS AND APPROVED". Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor and Subcontractor represents that the Contractor and Subcontractor has reviewed for compliance with the Contract Documents, and has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the

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information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from 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 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. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.11 Submittals: See Division 1 for additional requirements.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by the Owner, applicable laws, statutes, ordinances, permits, 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 Continued occupancy of existing facilities: See Division 1.

§ 3.13.2 Construction facilities, temporary controls and utilities: See Division 1.

§ 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.

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§ 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.

§ 3.14.3 Cutting and patching: See Division 1.

§ 3.14.4 The Contractor is responsible for all cutting, patching, and finishing of walls, floors, roofs, etc., to allow demolition and installation of equipment, piping, ductwork, conduit, wiring, fixtures etc. within existing facilities. Any openings through existing concrete shall be core drilled. Prior to undertaking cutting or drilling operations the Contractor shall verify that no structural or other damage will be caused by the drilling process. Prior to all core drilling the trade Contractor shall make adequate provisions to protect areas from water damage and debris. Provide means to collect all water and debris or use a dry method acceptable to the Owner. No structural member shall be cut without prior written approval from the Architect. The Contractor shall employ acceptable (to the Owner) experienced installers to patch finishes.

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents after reasonable notice from the Owner of such failure, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.15.3 Cleaning: See Division 1.

§ 3.15.4 Removal of debris and waste material shall be performed a minimum of one time daily and additionally as required to keep debris and waste from stockpiling and creating a potential fire or safety hazard.

§ 3.16 ACCESS TO WORK

The Contractor shall provide governmental authorities who may lawfully request access to the work, and the Owner and Architect proper facilities and equipment for access to the Work in preparation and progress wherever located.

§ 3.16.1 Emergency vehicle access to the existing facilities must be maintained at all times. Particular care shall be taken to minimize the off loading time of material delivery trucks. The Contractor shall provide a flagman with a radio to provide for immediate relocation of trucks in the event of an emergency.

§ 3.16.2 The existing roofs shall be protected as required during the construction to prevent any damage and or leaks. The integrity of the roofing membrane shall be maintained on a daily basis. All cuts for work such as installing new assemblies shall be completely sealed each day.

§ 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 (including but not limited to attorney's fees, court cost, and other costs of defense) 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, trademark, trade name, or similar property right or interest, or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

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§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them ("Indemnitees") 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, a Sub-subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which 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 entitled to be 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 Contractor agrees to indemnify and hold Indemnitees harmless from any and all loss or damages, including reasonable attorney fees, arising out of any lien claims on the Project or its funds, jurisdictional labor disputes or other labor troubles of any kind that may occur during performance of Contract.

§ 3.18.4 The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment of discharge of such obligations

§ 3.18.5 None of the foregoing provisions shall deprive the Indemnitees, or the Contractor of any action, right or remedy otherwise available to them or any of them pursuant to the laws of the State in which the Project is located.

§ 3.18.6 Notwithstanding any contrary provision herein or elsewhere in the Contract Documents, the Contractor shall not be obligated to indemnify and hold harmless any Indemnitee against liability for damages arising out of bodily injury to persons or damage to property, proximately caused by or resulting from the negligence, in whole or in part, of such Indemnitee, in violation of N.C.G.S 22B-1 or any amendment thereto. Any such provision shall be stricken and the remainder of such indemnification obligations shall remain in full force and effect.

§ 3.19 PERSONS AUTHORIZED TO SIGN DOCUMENTS

§ 3.19.1 The Contractor, prior to the execution of the Agreement between the Owner and Contractor shall file with the Architect a list of all persons in his firm who are authorized to sign documents such as contracts, certificates, and affidavits on behalf of the firm and to fully bind the firm to all the conditions and provisions of such documents, except that in the case of a corporation he shall file with the Architect a certified copy of a resolution of the Board of Directors of the corporation in which are listed the names and titles of corporation personnel who are authorized to sign documents on behalf of the corporation and to fully bind the corporation to all the conditions and provisions of such documents.

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. The term "Architect" means the Architect or the Architect's authorized representative, or such representative as the Architect may designate, who may be employed by the Architect as a consultant.

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§ 4.1.1.1 Each of these terms; "Architect", "Engineer", "Architect/Engineer", "A/E" or "Engineer/Architect" shall mean The East Group, PA, or an affiliate as otherwise provided in Contract Documents, or duly authorized representatives, such representatives acting severally within scope of particular duties entrusted to them, unless otherwise provided in Contract Documents.

§ 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, 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 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 (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract; however, such authority shall not be considered or construed as creating a fiduciary relationship between the Architect and Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by Owner and Architect, and as Architect deems necessary (1) to become generally familiar with and to keep the Owner informed about the progress and aesthetic quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site evaluations or inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety or health 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 Subparagraph 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 or failure to complete work on schedule. 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, unless otherwise approved by 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. Routine written communications between the Architect and the Contractor shall be in letter, memo, email or fax form. Such communications shall not be identified as "request for information", nor shall they substitute for any other written requirement pursuant to the provisions of the Contract Documents.

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

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§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 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. All costs made necessary by Contractor's failure to perform Work which conforms to the Contract Documents, including those of repeated procedures, shall be at Contractor's sole expense, including compensation for Architect's services and expenses.

§ 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. Such review and action on the part of the Architect is limited to only those submittals identified 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 as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review by the Architect, Architect's consultants, and Owner, if needed. 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 or health precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's review or 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 or other change documents for changes in the Work for the Owner's approval and execution, and the Architect may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents as required by the Contract Documents and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment based upon the final inspection indicating the Work complies with the requirements of the Contract Documents, 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 Project Representative may be employed at site by Architect. Project Representative's duties, responsibilities and limitations of authority are as set forth in an agreement between Owner and Architect, and will be provided upon request.

§ 4.2.11.1 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 21 days after receipt of written notice.

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

§ 4.2.13.1 The Architect will not undertake to settle differences between the Contractor, Subcontractors or suppliers or act as arbiter as to which Subcontractor, trade or supplier is to furnish or install various items indicated or required.

§ 4.2.14 The Architect will review and respond to requests for information (RFI) about the Contract Documents. The Architect's response to such requests will be made in writing within seven days upon receipt. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 The Architect's response to a request for information (RFI), or issuance of a clarification or interpretation shall be considered an interpretation, clarification, supplemental information or an order for a minor change in the Work not involving an adjustment in Contract Sum or extension of Contract Time and not inconsistent with the intent of the Contract Documents, and shall be binding, unless indicated otherwise in the Architect's response to the RFI.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 DEFINITIONS

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, 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. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.1.1 CLAIMS MUST CONTAIN FOLLOWING INFORMATION:

- .1 Date of the event giving rise to such Claim and, if applicable, date when the event ceased;
- .2 Nature of occurrence or condition giving rise to the Claim;
- .3 Identification of contractual provisions affected, and a detailed explanation of how the Claim is contrary to those provisions;
- .4 An estimate of any change in the Contract Sum, including an itemized breakdown of additional cost, if any;
- .5 An estimate of the effect upon Project Schedule, including a comparison of Project Construction Schedule and schedules prepared in connection with the Claim. If required by Owner or Architect, this shall include showing in CPM format, both critical and non-critical path activities affected, and showing Project Construction Schedule and Claim sequences, durations and float substantiating delay claimed.

§ 4.3.2 TIME LIMITS ON CLAIMS INITIATED PRIOR TO FINAL PAYMENT

Claims by either party must be initiated and submitted within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written Notice to the Architect and the other party.

§ 4.3.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

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§ 4.3.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly 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 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 so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made and submitted within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

§ 4.3.5 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.4.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under the Contract Documents shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar claims (collectively referred to in this Paragraph as Delays) whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with written notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, extended site conditions, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

§ 4.3.7 CLAIMS FOR ADDITIONAL TIME

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

§ 4.3.7.1 Only delay impacting the critical path of the Work shall be considered when determining if Contractor is entitled to additional time.

§ 4.3.7.2 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 and delay impacting the critical path of the Work..

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§ 4.3.8 CLAIMS FOR INJURY OR DAMAGE TO PERSON OR PROPERTY:

If either party to the Contract 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 evaluate the matter.

§ 4.3.9 CLAIMS FOR ADJUSTMENTS TO UNIT PRICING

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.

§ 4.3.9.1 Unit Prices: See Division 1.

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

Claims, including those alleging an error or omission by the Architect but excluding those arising under section 10.3, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, or litigation of all Claims between the Contractor and Owner 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 decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 4.4.1 The Architect will review Claims and within ten days of the receipt of 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.2 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 rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.3 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 days after receipt of such request, and shall either 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. Within 21 days of receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 4.4.4 The Architect will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration, if allowed by this document.

§ 4.4.5 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, if any, 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.

§ 4.4.6 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 prior to a decision on the Claim by the Architect, prior to any required mediation or arbitration by the terms of this Contract.

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§ 4.5 DISPUTE RESOLUTION

4.5.1 In the event of any dispute, claim, question or disagreement arising out of or relating to this Agreement or breach thereof, the parties hereto shall use their best effort to settle such matters by mutual agreement. To this effect, responsible, authorized representatives of the parties shall meet, consult and negotiate with each other in good faith, and, recognizing their mutual interests, attempt to reach a joint and equitable solution satisfactory to both parties. If they do not reach such solution within a period of thirty (30) days after the first notice by either party to the other of the existence of the dispute, and upon notice of either party to the other, the dispute shall be resolved by proceeding with the dispute resolution procedures set forth herein below.

- A. If the parties fail to agree on the resolution of any dispute through the negotiation process above, the parties shall proceed in good faith to attempt to settle the dispute through mediation by mediation either (1) under the Construction Industry Mediation Rules of the American Arbitration Association (“AAA”) in accordance with its rules governing the mediation of such disputes or (2) any other procedure agreed upon by the parties. Any party who chooses to first refer the dispute to mediation may, in its notice to the other, elect to refer the matter to either the AAA or other agreed upon administrator of mediation. Mediation is a precondition to further dispute resolution by the parties, and the dispute resolution procedure set forth herein below shall only be available following a declaration of impasse by the mediator or by the mutual agreement of the parties.
- B. If impasse is declared in any mediated dispute, the matter shall be submitted to arbitration with the AAA under its Construction Industry Rules or such other arbitration procedure agreed upon by the parties. Notice of intent to seek arbitration of any unresolved dispute shall be given by the claiming party within ten (10) days of the declaration of impasse. The responding party shall select either AAA or other administrator agreed upon with the claiming party, within seven (7) days of the receipt of the notice of intent to arbitrate.
- C. The following additional rules and procedures shall apply to all disputes arising under this Agreement and shall be in addition to or, in the case of any conflict with, shall be in lieu of the applicable rules of the AAA or other agreed upon administration rules:
 - (1) The parties acknowledge that this Agreement may evidence a transaction involving interstate commerce. Nonetheless, in rendering the award, the arbitrator(s) shall determine the rights and obligations of the parties according to substantive and procedural laws of the State of North Carolina, in general, and the North Carolina Revised Arbitration Act, in particular.
 - (2) All negotiations and mediation sessions and all arbitration hearings shall take place in Onslow County, North Carolina, or such other place as the parties may agree upon.
 - (3) In the arbitration of any dispute less than \$250,000, the sole arbitrator shall be a retired North Carolina or Federal Judge residing in the State of North Carolina. In disputes of \$250,000 or more, an arbitration panel of three (3) experienced construction industry professionals shall be appointed and shall include (a) one architect or engineer familiar with construction of health care facilities, (b) one experienced construction attorney or retired State of Federal Judge residing in the State of North Carolina, and (c) a senior staff representative of a public or private owner of a facility of the kind described in the Contract Documents.
 - (4) The Owner, the Contractor all Subcontractors, material suppliers, engineers, designers; architects, and their respective bonding companies and insurers and all other parties concerned with the construction of the improvements described in this Agreement are bound by this Dispute Resolution Clause to the greatest extent permitted by law, and all such parties consent and agree to the consolidation of all phases of the dispute resolution process hereunder with the dispute resolution proceedings pending among other parties whenever such proceeding arises out of the same transaction or are related to the same subject matter. The motion to consolidate may be made by any interested party and will be by an order of the arbitrator(s) petitioned, or if such arbitrator(s) fail to make such order, parties may apply to the Superior Court in Onslow County, North Carolina, for such order.
 - (5) At any time in the dispute resolution proceeding, the parties may agree to a high/low limitation which shall be binding upon all further proceedings.

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- (6) Discovery procedures may not be undertaken during negotiations or mediation phases. However, the parties shall proceed in good faith to make disclosure to the other party of all facts, documents, records and other evidence upon which each party bases its claim or defense.
- (7) Prior to any arbitration hearing, limited discovery shall be permitted for the purpose of obtaining production of documents and taking depositions. All discovery shall be governed by the North Carolina Rules of Civil Procedure. All issues regarding conformation with discovery requests shall be decided by the arbitrator(s). Request for discovery shall be initiated within thirty (30) days after the notice of intent to arbitrate is given and shall be fully responded to within thirty (30) days after receipt. All discovery, including depositions, shall be completed within seventy-five (75) days of the notice of intent to arbitrate or within the time the arbitrator(s), upon motion by either party, may extend or reduce the time for discovery.
- (8) The arbitrators' award shall be in writing and upon the request of either party made prior to the initial hearing, shall include findings of fact and conclusions of law which support the award.
- (9) Either party may appeal the arbitration award to appellate arbitration by filing with the AAA or the agreed upon administrator, within twenty (20) days after transmittal of the award, a written brief, not to exceed twenty (20) pages, stating the reason why the arbitrator(s)' decision should be reversed or modified. The opposing party shall have twenty (20) days to file a responsive brief, not to exceed twenty (20) pages. An appellate arbitrator shall be appointed by the AAA or agreed upon administrator, and shall be a retired North Carolina Superior Court or Appellate Judge. Either party may request oral argument which must be concluded within fourteen (14) days following submission of the final brief. No additional evidentiary material may be introduced in the appellate arbitration. The appellate arbitrator shall render a written decision affirming, reversing, modifying or remanding the arbitrator(s)' decision within twenty (20) days after receiving the final appellate submission.

The appellate arbitrator may base its decision only on one of the following grounds:

- (a) Any ground specified in the Revised Uniform Arbitration Act Section 1-569.23;
- (b) A material error of applicable law by the arbitrator;
- (c) A determination that the award was partially wholly arbitrary or capricious.

The appellate arbitrator may render a final decision on appeal or may remand the matter for further proceeding by the arbitrator(s).

- (10) All fees and expenses of the mediation and of the arbitration procedures shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs. Only in the case of extreme abuse of the procedure may the arbitrator(s) reallocate such costs and expenses among the parties.
- (11) The dispute resolution procedures set forth hereinabove shall be the exclusive remedies available to the parties to the Agreement to settle or resolve any and all disputes arising there under and any settlement or arbitral award may be enforced by an action in the Superior Court of Onslow County, North Carolina.

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.

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

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§ 5.1.3 Architect is not required to, but shall be allowed to contact any Subcontractor, Sub-subcontractor, vendors or materials supplier when it is necessary for the Architect to obtain any form of input from these sources that the Architect may require for the completion of Architect's services on the Project. Requests for information, interpretation or clarification, and correspondence must all be in writing and must be routed through Contractor.

§ 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, within 15 days after award of the Contract, shall furnish in writing to the Owner and 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 Owner and/or Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly 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. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.2.5 Acceptance of or failure to object to any or all listed Subcontractors or Sub-subcontractors by the Owner or Architect does not relieve Contractor from any responsibility for their failure to properly perform their work on the Project..

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including 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 Contractor is fully responsible for acts and omissions of Subcontractors, Sub-subcontractors and persons either directly or indirectly employed by them, or under their control, as Contractor is for its own employees.

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§ 5.3.2 Nothing in Contract Documents creates any contractual relationship between any Subcontractor or Sub-subcontractor or other tiers, and Owner or Architect, except for provisions in paragraph 5.4.

5.3.3 The Contractor shall assure the Owner, by written affidavit or in such other manner as the Owner may approve, that all agreements between the Contractor and his subcontractors incorporate the provisions of subparagraph 5.3 as necessary to preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by Subcontractors so that the subcontracting thereof will not prejudice such rights.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract except to the extent the Owner has previously paid Contractor for a Subcontractor's work but Contractor failed to pay Subcontractor. In such event, if the Owner has required the Contractor to provide a Payment Bond and Subcontractor shall seek recovery of such past due amounts only from the Payment Bond Surety.

§ 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 increased cost of mobilization resulting from the suspension.

§ 5.4.2.1 Contractor will provide copies of its subcontracts, agreements and current information on status of its accounts, upon demand by Owner.

§ 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 including a completion contractor retained by the Surety.

§ 5.5 ASSIGNMENT OF MATERIALS AND EQUIPMENT

§ 5.5.1 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

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 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.

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§ 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 Work by others: See Division 1.

§ 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 to report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor or others for which it is responsible, 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, jobsite, lay down and staging area and surrounding area free from waste materials and rubbish, the Owner may clean up after written notice, and the cost will be paid for by the Contractor.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Change Proposal Request, Construction Change Directive, clarification, interpretation 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 or Change Proposal Request 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; a clarification, interpretation or 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, Change

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Proposal Request, Construction Change Directive, clarification, interpretation or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order or Change Proposal Request (CPR) 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.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum are those listed in Subparagraph 7.3.3.

§ 7.2.3 Methods used in determining adjustments to Contract Time are subject to provisions in 4.3.7 and 7.5.6.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 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;
- .4 As provided in Section 7.3.7, 7.5.4 and 7.5.5.or
- .5 Costs incurred by Owner due to the Contractor's failure to perform its obligations under the Contract.

§ 7.3.4 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.

§ 7.3.4.1 Failure of Contractor and Owner to agree on an adjustment of Contract Sum or Contract Time shall not excuse Contractor from proceeding with prosecution and performance of Work not affected by Construction Change Directive. Contractor and Subcontractors, Sub-subcontractors and Suppliers shall administer all disputes in a manner which will permit Work to proceed on schedule while the matter in dispute is being resolved.

§ 7.3.5 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.

§ 7.3.6 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

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increase in the Contract Sum, an amount for overhead and profit in accordance with subparagraph 7.5.4, 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 those listed in subparagraph 7.5.4.

§ 7.3.7 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. 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. This pertains to costs associated with Change Orders, Change Proposal Request, Construction Change Directives, and Claims.

§ 7.3.7.1 In determining the total cost or credit to the Owner resulting from a change in the Work, the allowances for overhead and profit combined, including the total cost to the Owner, shall not exceed the percentages herein scheduled, as follows:

- (1) For the General Contractor, for any work performed by his own forces, 10% of the direct cost;
- (2) For each Subcontractor involved, work performed by his own forces, 10% of the direct cost;
- (3) For the General Contractor, for work performed by his subcontractor, 5% of the amount due the subcontractor.

§ 7.3.8 For any portion of such cost that remains in dispute, the Architect will make a determination. That determination of cost shall adjust the Contract Sum, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

§ 7.3.9 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 shall be recorded by preparation and execution of an appropriate Change Order or Change Proposal Request (CPR).

§ 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 and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 7.5 CHANGE PROPOSAL REQUESTS

§ 7.5.1 Change Proposal Request (CPR) defines proposed changes in the Work, and is prepared and forwarded to Contractor by Architect.

§ 7.5.2 Upon receipt of a Change Proposal Request, Contractor and Subcontractors shall review and evaluate the scope of the changes, and if any potential impact on Project is determined, shall notify Owner immediately. If there is a potential impact, the Owner may direct Contractor to stop Work in area affected by change to minimize the cost impact, or may direct Contractor, to proceed with the change.

§ 7.5.3 Contractor shall submit proposal to Architect within 10 days after receipt of a Change Proposal Request, in such form as the Architect may prescribe, and an itemized accounting together with appropriate supporting data to substantiating adjustments in Contract Sum and/or Contract Time, if any.

§ 7.5.4 All proposals shall be accompanied by a complete itemization and costs changes, including labor, materials, equipment and Subcontractors. Subcontractors and suppliers cost itemization shall also be provided. Method used to determine an adjustment in Contract Sum shall be limited to the following:

- .1 Labor Wages: Itemized by each craft involved, indicating hourly rate for each and hours required excluding premium pay, paid to employees directly engaged in work. Rates shall be the actual rate paid the workman in accordance with established management labor agreements.

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- .2 Labor Burden: Percent of actual wages for each craft includes: Mandatory fringe benefits required by established agreements, Vacation, Health and Welfare, Pension, Apprenticeship and other required programs, Social Security, and Unemployment Insurance.
- .3 Subsistence and/or Mileage: If in union agreements.
- .4 Materials and Equipment: Materials incorporated in Work at Contractor's actual invoice cost, including freight, and state sales tax. Indicate unit rates and units required
- .5 Overhead and Profit: 10 percent of net increase of labor and material for work performed by own forces. Includes, but not limited to: estimating; field supervision above foremen level superintendents, assistant superintendents, general foremen, engineers, accountants, timekeepers, office managers, and others on staff; office supplies; drinking water; temporary heat, temporary cooling, light and power; field toilets; small tools; record documents; and other cost of materials and/or equipment not incorporated in Work or directly associated with Work, including home office costs.
- .6 Directed Premium Time on Contract Work: Actual premium portion of wages for original contract Work which the Contractor was directed by Owner to be performed other than normal working hours, including; Social Security Taxes, Unemployment Insurance, and Union Fringe Benefits if required by Union Agreements, without overhead and profit mark-up.
- .7 Major Construction Equipment:
 - .7.1 Contractor Owned: Cost not to exceed 85 percent of current prevailing rates for rental of appropriate equipment for job and time period of use.
 - .7.2 Leased: Contractor's reasonable invoiced cost, (except lease-purchase Contractor equipment which is considered "Contractor owned").
- .8 Subcontractor Cost: Quoted in same manner prescribed for Contractor.
- .9 Overhead and Profit on Subcontractor's Work: 5 percent on net increase of Subcontractor's Work.
- .10 Bond and Insurance: Actual amount to be paid to surety and insurance carrier by Contractor without mark-up.

§ 7.5.5 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be net cost. 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.

§ 7.5.6 Only delay impacting the critical path of the Work shall be considered when determining if Contractor is entitled to additional time. If proposals include a change in time, the Contractor shall substantiate the number of days. An estimate of cost and of probable effect of delay on the Work progress and Project schedule shall be included to substantiating potential delay, including a comparison of Project Construction Schedule and schedules prepared to substantiate a change in time, indicated in CPM format both critical and non-critical path activities affected, and show Project Construction Schedule and change sequences, durations and float.

§ 7.5.7 Owner shall have the right within its sole discretion to require Contractor to commence performance of changes to Work based on Change Proposal Request prior to the submission by Contractor of cost proposal, or Owner's approval of the proposal. In such case, Contractor shall proceed with Work so changed upon receipt of a Construction Change Directive from Owner, and thereafter submit to Owner and Architect as soon as possible any cost proposal required for approval.

§ 7.5.8 Construction Change Directive may be issued if change is to be made, but Contractor's proposal is not acceptable, or in order to expedite the change.

§ 7.6 CONTRACTOR'S REQUEST FOR CHANGES

§ 7.6.1 The Architect will review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A request for a change in the Work shall be properly prepared, accompanied by the proposed cost, sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation to determine if the change is warranted or without the preparation of additional drawings or specifications. If the Architect

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determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied

§ 7.6.2 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect may make a recommendation to the Owner, who may authorize further investigation or issuance of such change. Architect may incorporate those changes into a Change Proposal Request for the Owner's consideration

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 between the Owner and Contractor for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement or a written notice to proceed.

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere or store materials or equipment on site 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. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall begin the Work in accordance with subparagraph 8.2.2 and shall proceed diligently and expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Once the Work is begun, it shall proceed without interruption unless specific interruptions are included in latest Project schedule approved by the Owner. The Work shall be adequately and continuously manned by Contractor staff throughout the Contract Time.

§ 8.2.4 Contractor, Subcontractors and their Subsubcontractors shall complete and coordinate Work in accordance with established schedule.

§ 8.2.5 Contractor is responsible for expediting Work, identifying potential conflicts and coordination problems, and proposing measures to avoid such problems.

§ 8.2.6 Whenever it becomes apparent that any activity completion date may not be met, Contractor shall take some or all of following actions and submit supplementary schedule indicating effect of action on progress and completion of Work, all without additional costs to Owner;

1. increase number of working hours per shift, shifts per working days, working days per week, or amount of construction equipment, or any combination of foregoing which will substantially eliminate backlog of Work, and put Project back on schedule, and/or,

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2. increase construction manpower in such quantity as will substantially eliminate backlog of Work, and put Project back on schedule, and/or,
3. reschedule activities to achieve maximum practical concurrency of accomplishment of activities, and put Project back on schedule.

§ 8.2.7 If Contractor fails to take any of the actions indicated in subparagraph 8.2.6 within three (3) days after receiving written notice, Owner may take action to attempt to put Project back on schedule, and deduct cost of such actions from money due or to become due Contractor, or shall be grounds for determination by Owner that Contractor is not prosecuting Work with such diligence as will insure completion within Contract Time. Upon such determination, Owner may terminate Contractor's right to proceed with Work, or any separable part thereof, in accordance with provisions of Article 14.

§ 8.2.8 Contractor shall bear cost of any services of Architect made necessary by delays in completion of Work due to actions or inactions of Contractor or any Subcontractors. Contractor shall promptly pay any such cost upon demand by Owner. At Owner's option, these costs may be deducted from any amounts otherwise due Contractor.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 Completion time stipulated under other sections of the Contract Documents may be extended by Change Order or Construction Change Directive to provide one additional work day for each full work day that the Contractor is prevented from working by reason by one or more of the following causes which impact the critical path of the Project Schedule:

1. Unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not limited to, catastrophes and/or acts of God, acts of another Contractor in the performance of a separate contract with the Owner, epidemics, quarantine restrictions, strikes or freight embargoes;
2. An unusual amount of severe weather to such an extent as to be definitely abnormal and beyond conditions that may be reasonably anticipated. For the purpose of this contract, a minimum of three (3) working days per calendar month shall be anticipated as "normally bad or severe weather", and such time will not be considered justification for an extension of time.
3. Stoppage of work ordered by the Owner for reasons over which Contractor has no control.

§ 8.3.2 No claims for extension of time will be considered when based on delays caused by conditions existing at the time bids were received, and of which the Contractor might reasonably expect to have full knowledge at the time of bidding, or upon delays caused by failure on the part of the Contractor to anticipate properly the requirements of the work contracted for as to materials, labor, and equipment. All claims for extension of time shall be made in writing to the Architect with or prior to the next application for payment; otherwise they shall be waived.

§ 8.3.3 Completion date stipulated under other sections of Contract Documents may be extended by Change Order to compensate for additional work that may be ordered by Owner, provided such work is over and beyond the current scope of work Contractor, and is of such nature as to materially affect date of completion.

§ 8.3.4 Time extensions, when approved, will be granted with the understanding and agreement by all parties that no charges, beyond those approved at the time of the occurrence of the event causing the extension, will be assessed the Owner for overhead and profit by the Contractor. Belated extended overhead charges will not be considered.

§ 8.4 Intentionally deleted.

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.

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§ 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.

§ 9.2.1 Application for Payments and Schedule of Values: See Division 1 for additional schedule of value requirements.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Unless otherwise provided in the Contract documents: At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. 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 reflecting retainage if provided for in the Contract Documents

§ 9.3.1.1 Such applications may not include requests for payment for portions of Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.2 The Contractor's Applications for Payment shall be made on AIA Form G-702 and the certification included thereon shall be executed and notarized. All pay applications shall be submitted with Contractor's daily "Project Monitoring Logs" for the days corresponding with the period for which application for payment is made.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Application for Payments and Schedule of Values: See Division 1 for additional Application for Payment requirements.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment and the Architect's site visit, either issue to the Owner a Certificate for Payment 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 Subparagraph 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 evaluation of the Work and the data comprising the Application for

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Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, 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 evaluations or inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 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 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to comply with the approved Project construction schedule;
- .9 erroneous estimates by the Contractor of the value of the work performed; or
- .10 the existence of any event of default under the Contract Documents.

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 Progress (monthly) payments will be made on account of 90 percent (90%) of the work done plus 90 percent (90%) of the material stored or stockpiled in an approved manner and location. However, when the value of completed work (excluding stored materials) reaches 50 percent (50%) or more of the current contract amount and provided satisfactory progress is being maintained on the Project, the Architect, upon request from Contractor with written consent of surety, may recommend to the Owner that the retainage be reduced to 5 percent (5%) of the value of work completed and materials stored on site. However, if the Contractor is granted the privilege of reduced retainage and thereafter falls behind for two successive months in his construction progress schedule, the original provisions for retainage shall automatically become effective the third month.

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§ 9.6.1.1 Owner will make monthly partial payments to Contractor within 25 days after receipt of Certificate for Payment from Architect.

§ 9.6.1.2 Owner may withhold payment to Contractor notwithstanding Architect's certification, if it is necessary, in Owner's opinion, to do so to protect Owner from loss due to any of the reasons set forth in Subparagraphs 9.5.1.1 to 9.5.1.10, inclusive.

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such 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 on account of portions of the Work done by such Subcontractor.

§ 9.6.4 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 seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by mediation, 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 the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work or designated portion thereof will not be considered to have achieved Substantial Completion until all systems are operational as designed; all life-safety components of the Work are complete; all designated or required governmental inspections or certifications have been made and posted including those by the State Division of Health and Human Services (DHSR), designated instructions of Owner's personnel in the operation of systems has been completed; and all final finishes are in place. The Owner's occupancy or use of the Work or a designated

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portion thereof under the provisions of Paragraph 9.9 shall in no way constitute the acceptance of the Work as Substantially Complete until the provisions of this Subparagraph 9.8.1 have been satisfied.

§ 9.8.2 Unless otherwise provided in the Contract Documents: When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall thoroughly inspect the work, and prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment and a written request for Architect's review of the work. 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 Unless otherwise provided in the Contract Documents: After receipt of the Contractor's Notice of Substantial Completion and the Contractor's list, the Architect and Owner will make inspections to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and Owner's inspections 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 another Contractor's Notice of Substantial Completion and a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 The Contractor's list shall include the following items; a) Request for Architect's Substantial Completion Inspection; b) Reports of the Contractor's inspections of every interior, exterior, and site element; c) Reports of all tests evidencing satisfactory function of every operable system as required; d) Reports on the instruction of the Owner's personnel in the use of operable systems and equipment including maintenance and operating information; e) Acceptance by each regulatory body having jurisdiction, including but not limited to NC Department of Health and Human Services, Division of Health Service Regulation; f) Certificate of Occupancy; g) List of items to be completed or corrected for each interior, exterior and site element, including operable systems and equipment; h) Operations and Maintenance Manuals; i) Test and Balance Reports; and j) All warranties.

§ 9.8.3.2 In the event that more than the two inspections by the Architect, described above are made necessary by the failure of the Contractor to complete the Work or to complete or correct items identified on the list of such items, the Contractor shall reimburse the Owner for all costs incurred including the cost of the Architect's services made necessary thereby.

§ 9.8.3.3 If the Contractor requests that the Architect prepare a list prior to Substantial Completion, or should the Contractor request a list be prepared to assist the Contractor in his completion and corrective work, or should the Architect be caused additional expense because of the Contractor's claim that work has been completed or corrected when it has not, then the Contractor shall reimburse the Owner for all additional costs incurred from the Architect for services provided by such request. The costs of such services will be withheld from payments then or thereafter due to the Contractor.

§ 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.

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§ 9.8.6 Contract Closeout: See Division 1 for additional Substantial Completion requirements.

§ 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 11.3.6 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 or the Owner notifies the Contractor of intent to occupy or use a portion of the work prior to substantial completion, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Unless otherwise provided in the Contract Documents: The Contractor shall inspect the work to determine that it is complete, is in accordance with the Contract Documents, and the Contract is fully performed. Upon receipt of the Contractor's Notice of Final Completion certifying that the Work is complete, is in accordance with the Contract Documents, that the Contract is fully performed,, that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will in a reasonable time make such inspection and, when the Architect and Owner 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 and Owner'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 Unless otherwise provided in the Contract Documents: Neither a progress payment nor a 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 the forms designated by the Owner, and attached hereto as Exhibits 1A thru 1D. 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

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the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.2.2 The Contractor shall submit closeout documents in accordance with Division 1 – General Requirements, prior to submitting final Application for 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.

§ 9.10.3.1 Final payment constituting entire unpaid balance of Contract Amount will be paid by Owner to Contractor within thirty (30) days after final Certificate for Payment has been issued by Architect.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents, or
- .4 faulty or defective Work appearing at or after final completion.

§ 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.

§ 9.10.5.1 Contract Closeout: See Division 1 for additional Final Completion and Final Payment requirements.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY AND HEALTH PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety and health precautions and programs in connection with the performance of the Contract. This requirement applies continuously and is not limited to normal working hours.

§ 10.1.1 The Architect's site responsibilities are limited solely to the activities of the Architect and the Architect's employees on site. These responsibilities shall not be inferred by any party to mean that the Architect has responsibility for site safety. Safety in, on, or about the site is the sole and exclusive responsibility of the Contractor alone. The Contractor's methods of work performance, superintendence of the Contractor's employees, and sequencing of construction are also the sole and exclusive responsibility of the Contractor alone.

§ 10.1.2 The Contractor agrees to waive any claim against the Owner and Owner's agents, architects, engineers, consultants, and their employees acting within the scope of their duties, and to defend, indemnify, and hold them harmless from any claim or liability for injury or loss that allegedly arises from the Contractor's performance of the Work described herein. The Contractor shall require all Subcontractors to conform with this provision before they start any work. Contractor shall insure this provision is in conformity with the insurance provision of this Contract.

§ 10.2 SAFETY AND HEALTH OF PERSONS AND PROPERTY

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

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- .1 employees on the Work and other persons who may be affected thereby, to include but not limited to the Owner and Architect, and their consultants and employees;
- .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 property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

§ 10.2.4 When use or storage of hazardous materials or equipment or unusual methods are necessary for execution of the Work, such as driving or removal of piles, wrecking, demolition, excavation or other similar potentially dangerous work is necessary, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and shall give Owner reasonable advance notice. Contractor is fully responsible for any and all damages, claims, and for the defense of all actions against Owner and Architect, and their consultants and employees resulting from the prosecution of such work.

§ 10.2.4.1 Use or storage of explosives is prohibited.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, 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, properly trained and qualified member or members of the Contractor's organization at the site whose duties shall be the prevention of accidents, damage to property, and to supervise and train personnel in the use of dangerous and hazardous equipment, materials and substances necessary for execution of the work. 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 load or permit any part of the construction or site, including new construction or existing facilities to be loaded with weights that will exceed design loads so as to endanger safety of persons or property.

§ 10.2.8 Contractor shall give notice in writing at least 48 hours before breaking ground, to all persons having interests on or near site, Public Utility Companies, Owners of property having structures or improvements in proximity to site of the Work, agencies, authorities, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representative on site to see that their property is properly protected. Such notice does not relieve Contractor of responsibility for any damages, claims, and defense of all actions against Owner and Architect resulting from performance of such Work in connection

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with or arising out of Contract.

§ 10.2.9 All parts of Work shall be braced to resist wind or other loads. Contractor shall perform Work with the explicit understanding that the design of the Project is based on all parts of Work having been completed and as such, the methods of performance of each part of Work shall be done accordingly.

§ 10.2.10 Temporary items such as, but not limited to scaffolding, staging, lifting and hoisting devices, shoring, excavation, barricades, and safety and construction procedures necessary in completion of Project shall be the responsibility of the Contractor and its Subcontractors and shall comply with all applicable codes and regulations. It shall not be responsibility of Owner, Architect or their representatives to determine if Contractor, Subcontractors or their representatives are in compliance with the aforementioned regulations.

§ 10.2.11 The Contractor shall comply with all Federal Occupational Safety and Health Administration Hazard Communications Act (HAZCOM) requirements, including properly maintaining Materials Safety Data Sheets (MSDS) at the Project site. The Contractor shall ensure that all MSDS are compiled in a single location at the Project site, and are available to the regulating agencies. The Contractor shall indemnify and hold the Owner and Architect harmless for their respective failure to comply with this provision.

§ 10.2.12 The Contractor shall be responsible for any fines, penalties or charges by any regulatory body by reason of any violation of safety or health regulations. Contractor shall also be responsible for reimbursement of any OSHA fines incurred by the Architect for Project site safety conditions created or controlled by the Contractor, that result in the Architect receiving a citation under the OSHA multi-employer citation provision.

§ 10.2.13 The Contractor shall notify Owner's and Architect's personnel upon arrival to the Project site of any known safety or health hazards at the Project, and the precautions they should take.

§ 10.2.14 The Contractor shall provide safety and health equipment (excluding boots) for the Owner and Architect to protect them from safety and health risks during the performance of their services during the construction of the Project.

§ 10.2.15 The Architect's review of Contractor's performance does not include review of adequacy of Contractor's safety or health measures.

§ 10.3 HAZARDOUS MATERIALS OR SUBSTANCES

§ 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 hazardous 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 in writing, with a copy to the Architect.

§ 10.3.1.1 The term "hazardous materials or substance" also includes, but is not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), radon gas, industrial waste, acids, lead, alkaline, irritants, contaminants, or other pollutants, excluding mild chemicals used in the cleaning of finished building materials.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor 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 will promptly reply

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to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If the Contractor has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor has 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. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.2.1 The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (1) the Owner causes remedial work to be performed which results in the absence of asbestos, polychlorinated biphenyl (PCB) or other hazardous materials or (2) the Owner and the Contractor, by written agreement, decide to resume performance of the Work, or (3) an appropriate governmental authority or environmental engineer certifies in writing that the Work may safely and lawfully proceed. In no event shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any subcontractor, any materialmen or supplier or any entity for whom any of them is responsible. The Contractor agrees not to use fill, products or other materials to be incorporated into the Work which may contain any asbestos, polychlorinated biphenyl (PCB) or other hazardous materials.

§ 10.3.3 The Architect and Architect's consultants and employees shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 10.3.4 The Owner and Architect shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the Project site unless such materials or substances are required by the Contract Documents and the Contractor so notified the Owner and Architect. The Contractor shall notify the Owner and Architect prior to bringing any hazardous material or substance on to the Project site.

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

§ 10.4 EMERGENCIES

In an emergency affecting safety or health 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 paragraph 4.3 and Article 7.

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase and maintain in companies properly licensed to do business in the state in which the Project is located and acceptable to the Owner, such insurance as will protect him, the Owner, the Architect and their agents, representatives, and employees from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or Subsubcontractor by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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1. claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts (with Workmen's Compensation and Employer's Liability Insurance in amounts not less than those necessary to meet the statutory requirements of the state(s) having jurisdiction over any portion of the Work);
2. claims for damages because of bodily injury, sickness or disease, or death of his employees; the Contractor will require his Subcontractors to similarly provide Workmen's Compensation Insurance for all of the latter's employees.
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
4. claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
7. claims for bodily injury or property damage arising out of completed operations.
8. Claims for losses, including bodily injury and property damage, covered by a Commercial General Liability policy.

The insurance shall be primary and noncontributing to any insurance possessed or procured by the Owner, and limits of liability shall be not less than those set forth herein or required by law, whichever is greater.

The insurance required shall have coverage limits of not less than the following:

Worker's Compensation including Occupational Disease and Employer's Insurance:

- a. Statutory – Amounts and coverage as required by Law including any applicable provision for Voluntary Worker's Compensation benefits as required by Labor Union agreements and including the "All States" endorsement.
- b. Employers Liability – At least \$100,000 each accident.

Public Liability and Property Damage Insurance – The Contractor shall provide and maintain, during the life of the contract, Comprehensive General Liability Insurance, including coverage for Premises Operations, Independent Contractors, Completed Operations, Products and Contractual Exposures, as shall protect such Contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the Contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the combined single limit of such insurance shall be \$3,000,000.

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the work performed under the contract.

Property Damages, including broad Form Property Damage and Explosion, Collapse, Underground property damage coverage, and blasting, where necessary.

Completed Operations Liability: Continuous coverage in force for one year after completion of Work.

Comprehensive Automobile Liability Insurance, including coverage for owned, non-owned and hired vehicles:

- a. Bodily Injury Liability - \$1,000,000 for each person and \$1,000,000 for each accident.
- b. Property Damage Liability - \$1,000,000 for each accident and \$3,000,000 for the aggregate of operations.

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§ 11.1.2 In addition to Contractual Liability including indemnification provision, Bodily Injury and Property Damage coverage under both comprehensive General and Comprehensive Automobile forms shall include "occurrence" basis wording, which means an event, or continuous or repeated exposure to condition which unexpectedly causes injury or damage during policy period.

§ 11.1.3 Contractor shall either (a) require each of its Subcontractors to procure and maintain during the life of its subcontract, Subcontractor Comprehensive General Liability, Automobile Liability, and Property Damage Liability Insurance of the type and in the same amounts as specified in this Subparagraph, or (b) insure the activities of its Subcontractors in its own policy.

§ 11.1.4 The insurance required by subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

§ 11.1.5 Certification of Insurance must be filed through the Architect by an insurer authorized to do business in the State in which the Project is located. All blanks and questions on Certificate must be filled out completely. Incomplete or inadequate Certificate will be returned to Contractor as unsatisfactory and commencement of its work will be delayed until satisfactory Certificate is submitted. Such delay will not warrant extension of contract time. These certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty days prior written notice has been given to the Owner.

§ 11.1.6 If excavation is required, Contractor shall obtain underground hazard coverage in addition to those shown above.

§ 11.1.7 If this insurance is written on Comprehensive General Liability policy form shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, AIA Document G715 for ACCORD form 25S may be acceptable.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Contractor shall be responsible for purchasing and maintaining complete Owner's protective liability insurance covering claims which may arise from operations under the Contract. The Contractor shall file a copy of all Owners' protective liability insurance policies with the Owner before any exposure to loss may occur. Limits shall be the same as specified for general liability and property damage insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The Owner shall be responsible for purchasing and maintaining Builders Risk property coverage upon the entire work at the site to the full insurable value thereof. Applicable deductibles shall be borne by the Owner. Owner will not be responsible for insuring any tools owned by mechanics, equipment, scaffolding, staging, towers and forms owned or rented by the Contractor, which are not intended to become part of the Project. The interest of the Contractor, subcontractors and sub-subcontractors in this insurance, if any, shall only be effective during the construction of the Project and all rights and interests of the Contractor, subcontractors and sub-subcontractors, if any, in this insurance shall end upon acceptance of the Project by the Owner.

§ 11.3.2 Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insured's, as their interests may appear, subject to the requirements of any applicable mortgage clause.

§ 11.3.3 The Owner shall file a certificate of all policies with the Contractor before an exposure to loss may occur. If the Owner does not intend to purchase such insurance, he shall inform the Contractor in writing prior to commencement of the work. The Contractor then shall effect insurance which shall protect the interest of himself, its Subcontractors and the 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 of the Owner to purchase or maintain such insurance and so notifies the Owner, then the Owner shall bear all reasonable cost appropriately attributable thereto.

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§ 11.3.4 The Subcontractors or Sub-subcontractors and the Contractor shall remedy any defects due to such faulty materials or workmanship and pay for any damage to other Work resulting therefrom, which shall appear within a period of one year from the date of acceptance as defined in general conditions, and in accordance with the terms of any special guarantee provided in the Contract. The Owner shall give notice of observed defect within ninety (90) days of the time that they were observed or should have been observed.

§ 11.3.5 The Owner as trustee shall have the power to adjust and settle with the insurers.

§ 11.3.6 If the Owner finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall not commence prior to a time mutually agreed to by the Owner and Contractor, which agreement shall not be unreasonably withheld, and before the consent of the insurance company or companies providing the property insurance. This insurance shall not be canceled or lapsed on account of such partial occupancy or use.

§ 11.3.7 Any wall or steel construction during this period of coverage must be properly braced, regardless of plans or specifications otherwise, to prevent damage from wind.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall, prior to signing the Contract, furnish bonds covering the faithful performance of the Contract and the Payment of all obligations arising there under. Cost of Bonds shall be paid by the Contractor.

§ 11.4.2 The Contractor shall deliver the bonds to the Owner not later than the date of execution of the Contract, or if the Work is commenced prior thereto in response to a Notice to Proceed, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such Bonds will be issued.

§ 11.4.3 Amount shown on each bond shall be equal to 100 percent of the total amount payable by terms of the Contract. Surety shall be a company licensed to do business in the State in which the work is located and shall be acceptable to Owner. The surety shall have an "A" minimum rating of performance as stated in the most current publication of Best's Key Rating Guide, "Property Liability" which shall show a financial strength rating of a least five (5) times the Contract Price. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety and certified to include the date of the Bond.

§ 11.4.4 Bonds shall be dated the same as or subsequent to the Contract, and accompanied by a current Power of Attorney. Bonds shall be furnished in sufficient number of copies so that one copy can be bound with each copy of the Agreement.

§ 11.4.5 Contractor shall keep Surety informed of progress of Work, and, where necessary, obtain surety's consent to, or waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other information required by surety.

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, Owner's or governing authority's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's, Owner's or governing authority 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, Owner or governing authority has not specifically requested to examine prior to its being covered, the Architect, Owner or governing authority 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

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

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

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, 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.

§ 12.3 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. Contractor shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept such defective or nonconforming Work (such costs to include but not limited to fees and charges of architects, engineers, testing agencies, consultants, attorneys and other professionals). Such adjustment shall be effected

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whether or not final payment has been made. If any such acceptance occurs prior to final payment, Owner shall be entitled to an appropriate decrease in the Contract Sum. If the acceptance occurs after final payment, an appropriate amount will be paid by the Contractor to the Owner.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of North Carolina without regard to any Conflict of Laws doctrine.

§ 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. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.2.3 Contractor shall not assign any monies due or to become due hereunder without written consent of Owner and of Contractor's Surety. File copy of consent of Surety, together with copy of assignment with Owner and Architect. In case Contractor assigns all or any part of any monies due or to become due under this Contract, instrument of assignment must contain clause substantially to effect that it is agreed that right of assignees in and to any monies due or to become due to Contractor shall be subject to prior liens and claims of all persons, firms and corporations for services rendered; for payment of all laborers and mechanics for labor performed; for payment for all materials and equipment furnished and payment for all materials and equipment used or rented in performance of the Work called for in Contract; and for payment of any liens, claims, or amounts due to governments or any of their funds.

§ 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 there under 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.

§ 13.4.3 Provided however, any statement herein or elsewhere in the Contract Documents, of the Architect's Standard of Care and Quality shall not alter the Architect's contractual obligations owed to the Owner

§ 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 testing agency, Project inspector (if any), public authorities, and (if requested) the Architect, timely notice of when and where tests and inspections are to be made so that they may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals

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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, Project inspector (if any) 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 Project inspector (if any) or 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 testing agency, Project inspector (if any), governing agency, and (if requested) the Architect of when and where tests and inspections are to be made so that they 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, laws, ordinances, rules or regulations, 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 and Project inspector (if any).

§ 13.5.5 If the Architect, Owner or Project inspector (if any) is to observe tests, inspections or approvals required by the Contract Documents, they will do so promptly and, where practicable, at the normal place of testing.

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

§ 13.5.7 Tests and Inspections: See Division 1 for additional requirements

§ 13.6 Preconstruction Conference: After execution of the Agreement, a conference will be held for review and acceptance of the schedule referred to in Paragraph 3.10, to establish procedures for handling shop drawings and other submittals, for processing Applications for Payment, and to establish a general working relationship among the parties to the Work. The conference will be held at a time and place to be determined by the Owner. The conference will be attended by a representative of the Contractor, the major subcontractors and material suppliers, the Architect and the Owner.

§ 13.7 Contractor's Responsibility For Additional Architect Fees: If more than two submittals are required for any shop drawing or other submittal, the Contractor shall be liable for any Architect fees incurred as the result of such submittals. If the Contractor defaults and causes the Architect to provide additional services, the Contractor shall be responsible for same. If the Contractor submits an extensive number of claims and the majority of such claims are rejected, the Contractor shall be responsible for any additional Architect fees for any such rejected claims. Any funds due under this paragraph shall be deducted by the Owner from the amounts due the Contractor for such additional Architect fees and paid directly to the Architect.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor 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;

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- .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 and a grace period of three (3) business days after written demand by the Contractor; 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 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit on the Work performed.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority having jurisdiction; 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, and the Owner believes that sufficient cause exists to justify such action, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner within thirty (30) days after demand. This obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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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 written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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

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

ARTICLE 15 ADDITIONAL PROVISIONS

§ 15.1 LEGISLATIVE/REGULATORY COMPLIANCE AND MODIFICATION

§ 15.1.1 The Contractor hereby agrees that it will comply with any and all statutes, laws, rules, regulations, licenses, certificates and authorizations of any governmental body or authority applicable to it in the performance or carrying out of its obligations under this Agreement. The Owner hereby agrees that it will comply with any and all statutes, laws, rules, regulations, licenses, certificates and authorizations of any governmental body or authority applicable to it in the performance or carrying out of its obligations under this Agreement. Each party will obtain and maintain current and in force all licenses, certifications, authorizations and/or permits (and will pay fees therefore) necessary for it to carry out its duties and responsibilities under this Agreement.

§ 15.1.2 In the event any law, rule, regulation or payment policy, or any rule or policy of any non-governmental third-party payer, or any other federal, state or local law, rule, regulation, policy, or any interpretation thereof at any time during the term of this Agreement is modified, implemented, threatened to be implemented, or determined to prohibit, restrict or in any way materially change the method or amount of reimbursement or payment (a) for services under this Agreement, or (b) for services to patients of a party as a result of this Agreement, or by virtue of the existence of this Agreement has or shall have a materially adverse effect on the ability of either party to engage in any commercial activity on terms at least as favorable as those reasonably attributable as of the date hereof or by virtue of this Agreement place at risk the tax-exempt status of the Owner or the tax-exempt status of its financing vehicles (all of the foregoing being hereinafter collectively referred to as "Changes," and individually, a "Change"), then the parties to this Agreement shall negotiate in good faith to amend this Agreement to preserve the economic expectations of the parties to the greatest extent possible in a manner consistent with any such Change. If this Agreement is not amended in writing prior to the effective date of the Change, then the party affected by the Change may terminate this Agreement upon thirty (30) days advance written notice. Upon such termination, neither party shall have any further rights hereunder, except those rights already accrued and those that expressly survive termination.

§ 15.2 OBRA COMPLIANCE

§ 15.2.1 The parties agree that upon request they will make their books, documents and records available to the Secretary of Health and Human Services, the comptroller general or their duly authorized representative to the extent required by Section 952 of the Omnibus Budget Reconciliation Act of 1980 and

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will obtain a similar agreement from any related sub-contractor whom they engage to perform on their behalf. This Section survives termination of this Agreement.

§ 15.3 INDEPENDENT CONTRACTOR

§ 15.3.1 This Agreement does not constitute the Contractor, its employees and agents as employees, agents or legal representatives of the Owner for any purpose whatsoever, it being the intent of the parties hereto to create the relationship with the Contractor, its employees and agents of an independent contractor for whose actions or failure to act, the Owner shall not be responsible. The parties shall not exercise control or direct the manner in which other parties perform their duties hereunder except to assure compliance with this Agreement. The parties further agree that the Contractor, its employees and agents are not eligible for any Owner employee benefits whatsoever and do not possess any rights or privileges as generally established for the Owner's employees.

§ 15.4 CONFIDENTIAL INFORMATION

§ 15.4.1 In the course of the Work both the Contractor and the Owner may receive information, data, items and materials relating to each other's personnel, business plans, methods and techniques, financing, financial condition, customers, lists, accounts, pricing, debts, assets, facilities and marketing, which we agree is Confidential Information. The Contractor and the Owner agree not to disclose the Confidential Information of the other party to any third party without express written consent either during the term of this Agreement or for two (2) years after its or expiration except as required by law.. Confidential Information does not include information that is (a) generally known in the industry in which the Contractor and the Owner compete; or (b) is readily ascertainable by proper means by competitors, through sources independent of either the Contractor or the Owner, or either party's personnel, through no act or no fault of the Contractor or the Owner.

§ 15.5 COSTS

§ 15.5.1 Except as otherwise specifically provided herein, each party shall bear its own costs and expenses incurred in connection with the performance of its obligations hereunder.

§ 15.6 TAXES

§ 15.6.1 Each party shall be responsible for payment of any and all federal, state, local or other taxes which may arise or be imposed as the result of its performance under this Agreement or as the result of the receipt of any compensation or other funds under this Agreement or in connection with the transactions contemplated hereby, if any. This Section shall survive termination of this Agreement.

§ 15.7 INVALID PROVISION

§ 15.7.1 In the event than any portion of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall be deemed to continue to be binding upon the parties hereto in the same manner as if the invalid or unenforceable provision were not a part of this Agreement.

§ 15.8 NON-WAIVER

§ 15.8.1 No waiver of any term or condition of this Agreement by either party shall be deemed to be a continuing or further waiver of the same term of condition or a waiver of any other term or condition of this Agreement.

§ 15.9 COMPLIANCE WITH POLICIES AND PROCEDURES

§ 15.9.1 It is the responsibility of the Contractor to comply with, and to assure that its employees and agents comply with, all policies and procedures of the Owner, including but not limited to (and only when applicable), the Infection Control Policies, Occupational Health and Wellness, Blood-Borne Pathogens Policy (incorporated by reference) and the Substance Abuse Policy and Manual (incorporated by reference) and/or any subsequent changes to or revisions in these Policies and Procedures. Copies of these Policies and Procedures will be made available for review upon request by the Contractor. When applicable, it is also the responsibility of the Contractor to assure that its employees and agents comply with the Infectious Disease Control measures and requirements of the Owner, including but not limited to, current vaccinations and health screenings as required by the Infectious Disease Department of the Owner and to provide the Owner with a copy of current immunization records consistent with the Hospital's Occupational Health

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Department requirements.

§ 15.10 COOPERATION

§ 15.10.1 In the event of any litigation against either party pertaining to any matter related to the other parties duties under this Agreement, both parties agree reasonably to cooperate with the other during the pendency of the claim or lawsuit including, without limitation, providing the other with all available information concerning the claim or lawsuit and meeting with the other or its representatives prior to giving testimony in connection with such claim or lawsuit, unless such cooperation adversely affects the party or the party is counseled by its attorney not to do so in order to preserve the attorney-client or any other privilege.

§ 15.11 NON-DISCRIMINATION IN EMPLOYMENT

§ 15.11.1 Neither party shall discriminate because of race, color, religion, sex, age, national origin, disability, or status as a Vietnam veteran, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment-related activities concerning their employees. In addition, each party affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

END OF GENERAL CONDITIONS 00797