



2017 Erosion, Grading, Retaining
Wall & Parking Lot Sealing,
Asphalt Surface, Repairs, Striping
For Bibb County Board of
Education

Alexander II Elementary School

Project Number # 17 - 28

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Alexander II Elementary

Project Number # 17-28

2017 Erosion, Grading,
Retaining Wall, Fencing,
Parking Lot Sealing, Asphalt
Surface, Repairs, Striping

BIBB COUNTY SCHOOL DISTRICT
MACON, GEORGIA 31201
PROJECT NUMBER:

BIBB SCHOOL CAPITAL PROCUREMENT DEPARTMENT
4580 CAVALIER DRIVE
MACON, GEORGIA 31211
PHONE: 478-779-3522
Email: Elaine.Wilson@bcsdk12.net

Alexander II Elementary

Project Number # 17-28

List of Drawing

- | | |
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SECTION 00200
REQUEST FOR PROPOSALS Bid#

THE BIBB COUNTY SCHOOL DISTRICT, GEORGIA, BOARD OF EDUCATION (the “Board”), pursuant to the provisions of O.C.G.A. § 36-91-1, *et. seq.*, here in seeks competitive proposals from general contractors to perform erosion work, grading, constructing retaining wall, fencing and parking lot upgrades located at **Alexander II Elementary School, 1156 College in Bibb County, Georgia.**

The requirements for construction of the Project, and the duties and responsibilities of the contractor whose Proposal is accepted, are set forth in the Contract Documents which include the Instructions to Proposers; Contract for Construction and Incorporated General Conditions (the “Contract”); supplementary and other conditions; the drawings; the specifications; and, any addenda issued by the Bibb County School System Capital Improvement Office, 484 Mulberry Street, Macon, Georgia, 31201. Contractors interested in submitting Proposals must obtain copies of the Contract Documents by contacting the **Director of Procurement & Purchasing Elaine Wilson, 4850 Cavalier Drive Macon, Georgia 31211, 478 779-3522, email address:elaine.wilson@bcsdk12.net.** Any contractor submitting a Proposal must procure a complete set of the Contract Documents from the **Bibb County School System Procurement Website** located at www.bcsdk12.net under the “Bids and Proposals” link located on the **district homepage.** Any Contractor who intends to submit a Proposal is required to attend a Mandatory Pre-Proposal meeting, which will be held on the May 10th. 10:00 AM at the project site located at 1156 College Street, Macon, Georgia 31201.

The Contract Documents require, among other things, the furnishing of all materials, labor and equipment for construction of the Project. The Board reserves the right to make available other relevant documents or information concerning the Project.

Any Proposal submitted in response to this Request should comply strictly with all requirements set forth in the Instructions too Proposers. Any such Proposal must contain the completed Proposal Form setting forth the contractor’s proposed lump sum contract price for full and complete construction of the Project in conformity with all requirements of the Contract

Documents. Any contractor submitting a Proposal must also complete and submit the required Contractor's Qualification Statement and Questionnaire.

In evaluating Proposals, the Board may seek additional information from any contractor concerning such contractor's Proposal or its proposed subcontractors' qualifications to construct the Project.

The Board intends to award the construction contract to the responsible and responsive contractor whose Proposal is determined in writing to be the most advantageous to the Board, taking into consideration the following evaluation factors which are listed in their order of relative importance:

- (A) The contractor's proposed lump sum contract price for full and complete construction of the Project in conformity with all requirements of the Contract Documents. (50 Points)
- (B) The contractor's prior experience in constructing similar projects on schedule and within budget including at least two projects comparable in size and scope to this Project. (15 Points)
- (C) The qualifications and experience of those personnel whom the contractor will assign to the Project. (15 Points)
- (D) The reputation of the contractor for integrity. (10 Points)
- (E) The contractor's history of successfully constructing projects without unnecessary contractual disputes, claims, arbitration or litigation. (10 Points)

All Proposals must be properly signed, submitted in duplicate in a sealed envelope, and received to the Bibb County School District Procurement Office located at 4850 Cavalier Drive, Macon, Georgia 31211, no later than May 17th, 2017, 10:00 AM

The Board will receive such Proposals at such time and place. Proposals received after said time will not be accepted. At the discretion of the Board, and in conformity with the applicable

provisions of Georgia Law, the Board may afford contractors an opportunity for subsequent discussion, negotiation, and revision of Proposals. The Board reserves the right to reject any or all Proposals and to waive any technicalities or formalities.

Any Proposal submitted in response to this Request shall remain open for acceptance by the Board, and same shall be honored by the contractor, for a period of thirty (30) days from the date set forth hereinabove for the receipt of Proposals.

Any questions or comments concerning this Request for Proposals should be addressed in writing to the Procurement Department Bibb County School System at the address as set forth hereinabove.

Bibb County School District

By: Elaine Wilson – Director of Procurement

END OF SECTION - 00200

**SECTION 00300
PROPOSAL
FORM**

The undersigned (“Contractor”) herein submits to THE BIBB COUNTY SCHOOL DISTRICT (the “Board”) the following Proposal for the construction by Contractor to perform erosion work, grading, constructing retaining wall, fencing and parking lot upgrades located at **Alexander II Elementary School, 1156 College in Bibb County, Georgia. (the “Project”).** This Proposal is submitted in response to the Board’s Request for Proposal 17-28 **dated the May 2, 2017.**

This Proposal is for the full and complete construction of the Project in conformity with all requirements of the Contract Documents. The submission of this Proposal constitutes a representation by the Contractor that it has carefully studied and examined all of the Contract Documents dated **May 2, 2017** furnished by **the Bibb County School System Procurement Department** and such other information as may have been furnished by the Board including Addendum/Addenda No._____.

By the act of submitting a proposal for the proposed contract, the Contractor represents that:

- The contractor and all subcontractors the contractor intends to use have carefully and thoroughly reviewed the drawings, specifications and other construction documents and have found them complete and free from ambiguities and sufficient for the purpose intended.
- The contractor and all workers, employees and subcontractors the contractor intends to use are skilled and experienced in the type of construction represented by the construction contract documents bid upon.
- The proposal figure is based solely upon the construction contract documents and properly issued written addenda and not upon any other written representation.
- Neither the contractor nor any of the contractor’s employees, agents, intended suppliers or subcontractors have relied upon any verbal representations from the Owner, or the Owner’s employees or agents including architects, engineers or consultants in assembling the bid figure.

A. Base Proposal

The Contractor proposes to fully and completely construct the Project in conformity with all requirements of the Contract Documents and furnish all necessary labor, material and equipment for such construction, and, furthermore, to fully, completely, and strictly perform all obligations of the Contractor as set forth in the Contract Documents, for the lump sum contract price of

(\$_____). Said lump sum contract price is allocated, in its entirety, to the following elements of the work:

Grading, Soil, Sod	\$__
Piping, Aggregates, Catch Basins	\$__
Waterproofing	\$__
Walls, Footings, Concrete	\$__
New Sidewalks, Fencing	\$__
Others	\$__

TOTAL AMOUNT OF PROPOSAL \$_____

B. Alternate Proposals – if applicable

Contractor proposes this Alternate Proposal in accordance with the Specifications. The lump sum pricing below is to fully implement the work described. (The Contractor shall clearly indicate the pricing below by use of the words “Add” or “Deduct.”)

VOLUNTARY ALTERNATE NO. 1: (attach pages if needed)

State the amount to be Added to or Deducted from the Total Proposal amount should the Owner decide to proceed with the portion of the work identified as Alternate No. 1.

ADD \$ _____

DEDUCT \$ _____

VOLUNTARY ALTERNATE NO. 2 : (attach pages if needed)

State the amount to be Added to or Deducted from the Total Proposal amount should the Owner decide to proceed with the portion of the work identified as Alternate No. 2.

ADD \$ _____

DEDUCT \$ _____

Attached hereto, and incorporated herein as part of this Proposal, Contractor submits a completed Contractor’s Qualification Statement and Questionnaire. Contractor acknowledges that the Board may rely upon the truthfulness and accuracy of the responses set forth therein.

In addition, Contractor has submitted herewith as part of this Proposal such documentation and information as Contractor deems appropriate to establish that it is a responsible and responsive Contractor and that its Proposal is the most advantageous to the Board, taking into consideration the specific evaluation factors, listed in their order of relative importance, as set forth in the above-referenced Request for Proposals. Contractor acknowledges that the Board may rely upon the truthfulness and accuracy of such documentation and information.

The Contractor proposes and agrees to commence actual construction (i.e, physical work) on site with adequate management, labor, materials and equipment in accordance with the specifications and prosecute the Work diligently and faithfully to completion within the required Contract Time. Prior to commencing such Work, and prior to the issuance of the Notice to Proceed, Contractor shall furnish to the Board duly executed Payment and Performance Bonds complying with all requirements of the Contract Documents along with Certificates of Insurance demonstrating that all required coverages are in place.

Contractor submits herewith its executed Bid Bond in accordance with the requirements of the Board as set forth in the Instruction to Proposers.

Contractor herein acknowledges that this Proposal shall constitute an offer by Contractor to contract with the Board for construction of the Project in conformity with all requirements of the Contract Documents for the lump sum contract price as set forth hereinabove. Such offer also includes the proposed unit prices and proposed pricing for any Alternates. Said offer by Contractor is irrevocable and subject to acceptance by the Board until the expiration of thirty (30) days following the date set forth in the Request for Proposals for receipt of Proposals by the Board.

CONTRACTOR: _____

By: _____

Title: _____

Sworn and subscribed to before me this
_____ day of _____, 20____.

NOTARY PUBLIC
Commission Expiration:

SECTION 00800
GENERAL CONTRACTOR'S
QUALIFICATION
STATEMENT AND QUESTIONNAIRE

NAME OF PROJECT:

Bibb County School District – 2017 Erosion, Grading, Retaining Wall, Fencing, Parking Lot Sealing, Asphalt & Surface Repairs, Striping – Alexander II Elementary

NAME OF OWNER: THE BIBB COUNTY SCHOOL DISTRICT

NAME OF PROPOSED CONTRACTOR:

(The "Contractor")

I. INSTRUCTIONS

- A. ALL QUESTIONS ARE TO BE ANSWERED IN FULL, WITHOUT EXCEPTION. IF COPIES OF OTHER DOCUMENTS WILL ANSWER THE QUESTION COMPLETELY, THEY MAY BE ATTACHED AND CLEARLY LABELED. IF ADDITIONAL SPACE IS NEEDED, ADDITIONAL PAGES MAY BE ATTACHED AND CLEARLY LABELED.
- B. THE OWNER, THE BIBB COUNTY SCHOOL DISTRICT, GEORGIA, BOARD OF EDUCATION (HEREINAFTER "OWNER"), ITS AGENTS AND REPRESENTATIVES, SHALL BE ENTITLED TO CONTACT EACH AND EVERY REFERENCE LISTED IN RESPONSE TO THIS QUESTIONNAIRE, AND EACH ENTITY REFERENCED IN ANY RESPONSE TO ANY QUESTION IN THIS QUESTIONNAIRE. THE CONTRACTOR, _____, (HEREINAFTER "CONTRACTOR"), BY COMPLETING THIS QUESTIONNAIRE, EXPRESSLY AGREES THAT ANY INFORMATION CONCERNING THE CONTRACTOR IN POSSESSION OF SAID ENTITIES AND REFERENCES MAY BE MADE AVAILABLE TO THE OWNER.
- C. ONLY COMPLETE AND ACCURATE INFORMATION SHALL BE PROVIDED BY THE CONTRACTOR. THE CONTRACTOR HEREBY WARRANTS THAT, TO THE BEST OF ITS KNOWLEDGE AND BELIEF, THE RESPONSES CONTAINED HEREIN ARE TRUE, ACCURATE, AND COMPLETE. THE CONTRACTOR

ALSO ACKNOWLEDGES THAT THE OWNER IS RELYING ON THE TRUTH AND ACCURACY OF THE RESPONSES CONTAINED HEREIN.

IF IT IS LATER DISCOVERED THAT ANY MATERIAL INFORMATION GIVEN IN RESPONSE TO A QUESTION WAS PROVIDED BY THE CONTRACTOR, KNOWING IT WAS FALSE, IT SHALL CONSTITUTE GROUNDS FOR IMMEDIATE TERMINATION OR RESCISSION BY THE OWNER OF ANY SUBSEQUENT AGREEMENT BETWEEN THE OWNER AND THE CONTRACTOR. THE OWNER SHALL ALSO HAVE AND RETAIN ANY OTHER REMEDIES PROVIDED BY LAW.

- D. IF THERE ARE ANY QUESTIONS CONCERNING THE COMPLETION OF THIS FORM, THE CONTRACTOR IS ENCOURAGED TO CONTACT THE PROJECT ENGINEER,
Bibb County School System Procurement Dept.
4580 Cavalier Drive, Macon, GA 31211
(478) 779-3522
e-mail: Elaine.Wilson@bcsdk12.net
- E. THE COMPLETED FORM SHALL BE SUBMITTED WITH THE CONTRACTOR'S PROPOSAL.
- F. THIS FORM, ITS COMPLETION BY THE CONTRACTOR, AND ITS USE BY THE CONTRACTOR, AND ITS USE BY THE OWNER, SHALL NOT GIVE RISE TO ANY LIABILITY ON THE PART OF THE OWNER TO THE CONTRACTOR OR ANY THIRD PARTY OR PERSON.

II. **GENERAL BACKGROUND**

- A. CURRENT NAME AND ADDRESS OF CONTRACTOR:

B. PREVIOUS NAME OR ADDRESS
OF CONTRACTOR, IF ANY:

C. CURRENT PRESIDENT
OR CHIEF EXECUTIVE
OFFICER:

Years in that position

D. NUMBER OF EMPLOYEES:
(Permanent)

E. NAME AND ADDRESSES OF
CURRENT AFFILIATED
COMPANIES (PARENT,
SUBSIDIARY, DIVISIONS):

III. **FINANCIAL STATUS**

A. **BANKRUPTCIES**

1. Has the Contractor, or any of its parents or subsidiaries, ever had a Bankruptcy Petition filed in its name, voluntarily or involuntarily? (If yes, specify date, circumstances, and resolution).

2. Has any Majority Shareholder ever had a Bankruptcy Petition filed in his/her name, voluntarily or involuntarily? (If yes, specify date, circumstances, and resolution).

B. **LOANS**

1. Is this Contractor currently in default on any loan agreement or financing agreement with any bank,

financial institution or other entity? (If yes, specify details, circumstances, and prospects for resolution).

C. BONDING

1. What is the Contractor's current bonding capacity with a contract surety company?

2. Please identify the Contractor's surety company.

3. Please give the name, address, and telephone number of your current surety agent or underwriting contact.

4. Have Performance or Payment Bond claims ever been made to a surety for Contractor on any project, past or present?

5. If the answer to (4) is yes, please describe the claim, the name of the company or person making the claim, and the resolution of the claim.

6. In the past five years, has any surety company refused to bond the Contractor on any project? (If answer is yes, specify the reasons given for such refusal, and the name and address of the surety company that refused to bond).

7. In the past five years, has any surety company refused to bond the Contractor's parent, or subsidiaries, on any project? (If answer is yes, please specify the reasons given for such refusal, and the name and address of the surety company that refused to bond).

D. MERGERS AND ACQUISITIONS

1. State whether or not the Contractor has been the subject of a corporate merger within the preceding three years. If so, please identify all parties to such merger, provide the date of same, and a brief description of the transaction.

2. State whether or not the Contractor has acquired any other companies or entities in the preceding three years. If so, please identify all companies or entities acquired, provide the date of acquisition, and a brief description of the business of the company or entity acquired.

IV. PROPOSED PROJECT PERSONNEL

A. PROPOSED PROJECT MANAGER

1. List the name, qualifications and background of your proposed project manager for this Project. (Include the names and addresses of companies he/she has been affiliated with in the last five years).

2. List at least three projects, by size, type and duration that the proposed project manager has supervised in the last five years for the Contractor, or for any other company.

B. PROPOSED SUPERINTENDENT

1. List the qualifications and background of your proposed job superintendent (if different than the project manager) and include the names and addresses of any companies he/she has been affiliated with in the last five years.

2. List at least three projects within a 60 mile radius, by size, type, and duration that the proposed job superintendent has supervised in the last five years for the Contractor, or for any other company.

3. List at least three projects outside a 60 mile radius, by size, type, and duration that the proposed job superintendent has supervised in the last five years for the Contractor, or for any other company.

V. **COMPANY EXPERIENCE - SIMILAR PROJECTS**

- A. List all projects of reasonably similar nature, scope, and duration (similar to the Owner's Project) performed by your company in the last seven years, specifying, where possible, the name and last known address of each owner of such projects.

- B. Of the projects listed in response to Subsection (A), identify any which was the subject of a substantial claim or lawsuit by, or against, the Contractor. Please identify in your response the nature of such claim or lawsuit, the court in which the case was filed, and the details of its resolution.

VI. **LEGAL PROCEEDINGS**

A. **ARBITRATIONS OR MEDIATION**

List all construction arbitration or mediation demands filed by, or against, the Contractor in the last five years, and identify the nature of the claim, the amount in dispute, the parties, and the ultimate resolution of the proceeding and whether the proceedings were arbitration or mediation.

B. **LAWSUITS**

List all construction-related lawsuits (other than labor or personal injury litigation) filed by, or against, the Contractor in the last five years, and identify the nature of the claim, the amount in dispute, the parties, and the ultimate resolution of the lawsuit.

C. **DISPUTES**

1. Identify any disputes filed against or by the Contractor in regards to the Owner or the Architect on any project in the last five years.

D. OTHER PROCEEDINGS

1. Identify any lawsuits, administrative proceedings, or hearings initiated by the National Labor Relations Board or similar state agency in the past seven years concerning any labor practices of the Contractor. Identify the nature of any proceeding and its ultimate resolution.

2. Identify any lawsuits, administrative proceedings, or hearings initiated by the Occupational Safety and Health Administration concerning the project safety practices of the Contractor in the last seven years. Identify the nature of any proceeding and its ultimate resolution.

3. Identify any lawsuits, administrative proceedings, or hearings initiated by the Internal Revenue Service, or any state revenue department, concerning the tax liability of the Contractor (other than audits) in the last seven years. Identify the nature of any proceeding and its ultimate resolution.

4. Have any criminal proceedings or investigations been brought against the Contractor in the last ten years? (If the answer is yes, please attach a complete and detailed report of the facts and circumstances concerning all such proceedings or investigations with your responses to this Questionnaire)

VII. **REFERENCES**

(ALL REFERENCES MUST BE CURRENT, I.E., ENTITIES WITH WHOM YOU HAVE DONE BUSINESS IN THE PRECEDING TWELVE MONTHS.)

A. **BANKS**

Bank #1

Name: _____

Address: _____

City/State: _____

Contact: _____

Phone: _____

Bank #2

Name: _____

Address: _____

City/State: _____

Contact: _____

Phone: _____

B. MAJOR SUBCONTRACTORS

Subcontractor #1

Name: _____

Address: _____

City/State: _____

Contact: _____

Phone: _____

Subcontractor #2

Name: _____

Address: _____

City/State: _____

Contact: _____

Phone: _____

C. SUPPLIERS

Major Supplier #1

Name: _____

Address: _____

City/State: _____

Contact: _____

Phone: _____

Major Supplier #2

Name: _____

Address: _____

City/State: _____

Contact: _____

Phone: _____

D. OWNERS

Project #1

Name: _____

Location: _____

Contract Price: _____

Owner: _____

Address: _____

City/State: _____

Contact: _____

Phone: _____

Arch/Eng: _____

Contact/Phone: _____

Project #2

Name: _____

Location: _____

Contract Price: _____

Owner: _____

Address: _____

City/State: _____

Contact: _____

Phone: _____

Arch/Eng: _____

Contact/Phone: _____

Project #3

Name: _____

Location: _____

Contract Price: _____

Owner: _____

Address: _____

City/State: _____

Contact: _____

Phone: _____

Arch/Eng: _____

Contact/Phone: _____

Project #4

Name: _____

Location: _____

Contract Price: _____

Owner: _____

City/State: _____

Contact: _____

Phone: _____

Arch/Eng: _____

VIII. **COMMENTS**

Please list any additional information that you believe would assist the Owner in evaluating the possibility of using the Contractor on this Project. You may attach such additional information as an Exhibit to this Statement and Questionnaire.

I certify to the Owner that the information and responses provided on this Questionnaire are true, accurate and complete. The Owner, or its designated representative, may contact any entity or reference listed in this Questionnaire. Each entity or reference may make any information concerning the Contractor available to the Owner or its designated representative.

Dated _____, 20__.

CONTRACTOR:

By: _____

Title: _____

Date: _____

Sworn to and subscribed
before me this _____ day of _____, 20__.

Notary Public

My Commission Expires _____



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BUILDING A BETTER WAY

ConsensusDocs® 205
STANDARD SHORT FORM AGREEMENT BETWEEN OWNER AND CONSTRUCTOR
(Lump Sum Price)

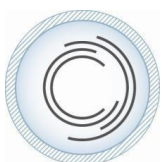


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- Red Boxes:** Instructions for fields that are typically required to complete contract.
- Blue Boxes:** Instructions for fields that may or may not be required for a complete contract.
- Green Boxes:** Provide general instructions or ConsensusDocs Coalition Guidebook comments, which can be found at www.ConsensusDocs.org/guidebook.

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ConsensusDocs® 205

**STANDARD SHORT FORM AGREEMENT BETWEEN OWNER AND
CONSTRUCTOR
(Lump Sum Price)**

Job Number: RFP 17-28

Account Code: #359

This Agreement is made this [] day of [], [], by and between

OWNER, []

and

CONSTRUCTOR, []

Tax identification number (TIN) []. Contractor License No., if applicable []

Owner and Constructor are collectively the "Parties."

PROJECT: []

ARTICLE 1 THE WORK

THE WORK Constructor shall use its diligent efforts to perform the "Work," as described in Exhibit A, in an expeditious manner consistent with the Contract Documents. Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work in full accord with and reasonably inferable from the Contract Documents.

ARTICLE 2 PRICE

PRICE As full compensation for performance by Constructor of the Work, Owner shall pay Constructor the lump sum price of [] dollars (\$[]). The lump sum price, "Contract Price," is subject to adjustment as provided in this Agreement.

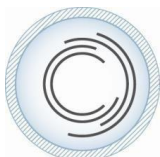
ARTICLE 3 EXHIBITS

EXHIBITS The following attached exhibits are made part of this Agreement:

- (a) Exhibit A: The Work, [] pages.
- (b) Exhibit B: Existing Contract Documents.
- (c) Exhibit C: Progress Schedule, [] pages.
- (d) Exhibit D: Alternates and Unit Prices, [] pages.

ARTICLE 4 ETHICS

ETHICS Each Party shall perform their obligations with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts that arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, suppliers, or others to secure preferential treatment.



ARTICLE 5 CONSTRUCTOR'S RESPONSIBILITIES

5.1 CONSTRUCTOR'S RESPONSIBILITIES Constructor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1.1 Except for permits and fees that are the responsibility of Owner pursuant to this Agreement, Constructor shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work.

5.1.2 Constructor shall pay all applicable taxes for the Work provided by Constructor.

5.1.3 Owner may elect to perform work at the Worksite directly or by others retained by Owner. The Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Constructor and to assist with the coordination of activities and the review of construction schedules and operations. Contract Price and Contract Time may be equitably adjusted in accordance with this Agreement for changes made necessary by the coordination of construction activities, and the construction schedule shall be revised accordingly.

5.1.4 Before commencing the Work, Constructor shall examine and compare the drawings and specifications with information furnished in the Contract Documents; relevant field measurements made by Constructor; and any visible conditions at the Worksite affecting the Work.

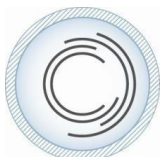
5.1.5 COMPLIANCE WITH LAWS Constructor shall comply with all laws at its own costs. Constructor shall be liable to Owner for all loss, cost, or expense, attributable to any acts or omissions by Constructor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures.

5.1.6 WARRANTY

5.1.6.1 Constructor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Constructor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others retained by Owner, or abuse.

5.1.6.2 If, prior to the Date of Substantial Completion and within one year after the date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Owner shall promptly notify Constructor in writing. Unless Owner provides written acceptance of the condition, Constructor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.1.7 SAFETY Constructor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Constructor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Constructor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and



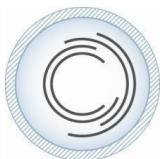
equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.1.8 HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Constructor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate government agency. If Constructor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Constructor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.

5.1.9 MATERIALS BROUGHT TO THE WORKSITE Constructor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.1.10 SUBMITTALS Constructor shall submit to Owner and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required by §6.1.5. Constructor shall be responsible to Owner for the accuracy and conformity of its submittals to the Contract Documents. Constructor shall prepare and deliver its submittals to Owner and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Owner and others retained by Owner. Constructor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Constructor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Owner. Neither Owner nor Design Professional shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Constructor. Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Constructor shall perform all Work strictly in accordance with approved submittals. Owner's approval does not relieve Constructor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.

5.1.11 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Constructor shall stop Work and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Constructor is to proceed. Constructor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the unknown condition shall be made by Change Order.



5.1.12 CUTTING, FITTING, AND PATCHING Constructor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or others retained by Owner.

5.1.13 CLEANING UP Constructor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Constructor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Constructor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

ARTICLE 6 OWNER'S RESPONSIBILITIES

6.1 OWNER'S RESPONSIBILITIES Any information or services to be provided by Owner shall be provided in a timely manner.

6.1.1 FINANCIAL INFORMATION Before commencing the Work and thereafter at the written request of Constructor, Owner shall provide Constructor with evidence of Project financing. Evidence of such financing shall be a condition precedent to Constructor's commencing or continuing the Work. Constructor shall be notified prior to any material change in Project financing.

6.1.2 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Constructor the following, which Constructor shall be entitled to rely upon for its accuracy and completeness:

6.1.2.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations;

6.1.2.2 tests, inspections, and other reports dealing with environmental matters, hazardous material, and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law;

6.1.2.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and any other information or services requested in writing by Constructor which are required for Constructor's performance of the Work and under Owner's control.

6.1.3 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Constructor's written request, Owner shall provide Constructor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's interest in the real property on which the Project is located and the record legal title.

6.1.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those required of Constructor pursuant to this Agreement, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

6.1.5 DOCUMENTS IN ELECTRONIC FORM If Owner requires that Owner, Design Professional, and Constructor exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Constructor shall agree on and follow a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum.



ARTICLE 7 SUBCONTRACTS

SUBCONTRACTS Constructor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.

ARTICLE 8 CONTRACT TIME

8.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date on page one, unless otherwise set forth below: [____].

8.2 TIME Substantial Completion of the Work shall be achieved in [____] ([____]) Days from the Date of Commencement. Unless otherwise specified in the Certificate of Substantial Completion, the Work shall be finally complete within [____] ([____]) Days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents. Time is of the essence for obligations of the Contract Documents.

ARTICLE 9 SCHEDULE OF THE WORK

9.1 SCHEDULE OF THE WORK Before submitting its first application for payment, Constructor shall submit to Owner, and if directed, to Design Professional, a Schedule of the Work showing the dates on which Constructor plans to begin and to complete various parts of the Work, including dates on which information and approvals are required from Owner.

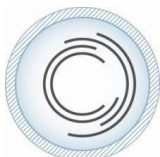
9.1.1 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. Owner may require Constructor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or others. If Constructor subsequently incurs costs or is delayed, Constructor may seek equitable adjustment in the Contract Price and Contract Time under this Agreement.

ARTICLE 10 DELAYS AND EXTENSIONS OF TIME

10.1 If Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Constructor, Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of Constructor include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or others; (b) changes in the Work or the sequencing of the Work ordered by Owner or arising from an Owner decision that impacts Contract Time; (c) encountering Hazardous Materials, or concealed and unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Constructor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) terrorism, (j) epidemics, (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Constructor shall process any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 12.

10.2 In addition, if Constructor incurs additional costs as a result of a delay that is caused by items (a) through (d) in §10.1, Constructor may be entitled to an equitable adjustment in the Contract Price subject to ARTICLE 12

10.3 In the event delays to the Work are encountered for any reason, Constructor shall provide prompt written notice to Owner of the cause of such delays after Constructor first recognizes the delay. The Parties each agree to undertake reasonable steps to mitigate the effect of such delays.



10.4 NOTICE OF DELAY CLAIMS If Constructor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay, Constructor shall give Owner written notice of the claim. If Constructor causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs, subject to ARTICLE 17.

ARTICLE 11 ALLOWANCES

11.1 ALLOWANCES All allowances stated in the Contract Documents shall be included in the Contract Price. While Owner may direct the amounts of, and particular suppliers or subcontractors for, specific allowance items, if Constructor reasonably objects to a supplier or subcontractor, it shall not be required to contract with them. Owner shall select allowance items in a timely manner so as not to delay the Work. Allowances shall include the costs of materials and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Constructor's overhead and profit for the allowances shall be included in the Contract Price, but not in the allowances. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

ARTICLE 12 CHANGES

12.1 Constructor may request or Owner may order changes in the Work or the timing or sequencing of performance of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect the Contract Time or Contract Price shall be formalized in a Change Order.

12.2 The Parties shall negotiate in good faith an appropriate adjustment to the Contract Price or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld. Constructor shall not be obligated to perform changes in the Work without a Change Order or Interim Directive.

12.3 INTERIM DIRECTIVES

12.3.1 Owner may issue a written Interim Directive directing a change in the Work before agreeing on an adjustment to the Contract Price or the Contract Time, or directing Constructor to perform Work that Owner believes is not a change.

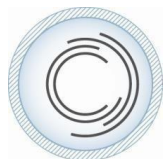
12.3.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directive. As the directed work is performed, Constructor shall submit its costs for such work with its application for payment. If there is a dispute as to the cost of the Work, Owner shall pay Constructor fifty percent (50%) of its actual (incurred or committed) cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 19.

12.3.3 When Owner and Constructor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order.

12.4 COST OR CREDIT DETERMINATION

12.4.1 An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods:

- (a) unit prices set forth in this Agreement or as subsequently agreed;



- (b) a mutually accepted, itemized lump sum; or
- (c) costs calculated on a basis agreed upon by Owner and Constructor plus []% ([]%) overhead and [] ([]%) profit.

12.4.1.1 If a cost or credit determination cannot be agreed to above, the cost of the change in the Work shall be determined by the reasonable actual expense incurred or savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, Constructor's overhead and profit shall be adjusted accordingly. In case of a net decrease in the Contract Price, Constructor's overhead and profit shall not be adjusted unless ten percent (10%) or more of the Project is deleted. Constructor shall maintain a documented itemized accounting evidencing the expenses and savings.

12.5 UNIT PRICES If unit prices are included in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit price items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Constructor, such unit prices shall be equitably adjusted.

ARTICLE 13 PAYMENT

13.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, Constructor shall prepare and submit to Owner and, if directed, Design Professional, a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a monetary price such that the total of all items shall equal the Contract Price.

13.2 PROGRESS PAYMENTS Constructor shall submit to Owner and, if directed, Design Professional a monthly application for payment no later than the 28th day of the calendar month for the preceding calendar month. Constructor's applications for payment shall be itemized and supported by Constructor's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount due on any payment application, less any amounts as set forth below, no later than thirty (30) Days after Constructor has submitted a complete and accurate payment application. Owner may deduct, from any progress payment, such amounts as may be retained pursuant to §13.3.

13.3 RETAINAGE From each progress payment made before Substantial Completion Owner will retain Ten percent (10 %) of the amount otherwise due after deduction of any amounts as provided in §13.4.

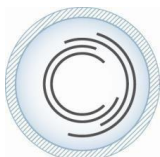
13.4 ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Constructor is responsible for such under this Agreement:

13.4.1 Constructor's repeated failure to perform the Work as required by the Contract Documents;

13.4.2 loss or damage arising out of or relating to this Agreement and caused by Constructor to Owner or to others retained by Owner to whom Owner may be liable;

13.4.3 Constructor's failure to properly pay either Subcontractors or Suppliers following receipt of payment from Owner for that portion of the work or for supplies, provided that Owner is making payments to Constructor in accordance with the terms of this Agreement;

13.4.4 rejected or Defective Work not corrected in a timely fashion;



13.4.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;

13.4.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and

13.4.7 uninsured third-party claims involving Constructor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Constructor furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Constructor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.

13.5 PAYMENT DELAY If for any reason not the fault of Constructor, Constructor does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, Constructor, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Constructor has been received. If Constructor incurs costs or is delayed resulting from shutdown, delay, and start-up, Constructor may seek an equitable adjustment in the Contract Price or Contract Time.

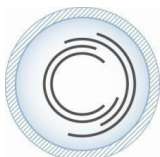
13.6 SUBSTANTIAL COMPLETION When Substantial Completion of the Work or a designated portion thereof is achieved, Constructor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of Owner and Constructor for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Constructor to Owner for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

13.6.1 Upon acceptance by Owner of the Certificate of Substantial Completion, Owner shall pay to Constructor the remaining retainage held by Owner for the work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by Owner and Constructor as necessary to achieve final completion. Uncompleted items shall be completed by Constructor in a mutually agreed timeframe. Owner shall pay Constructor monthly the amount retained for unfinished items as each item is completed.

13.7 FINAL COMPLETION When final completion has been achieved, Constructor shall prepare for Owner's acceptance a final application for payment stating that to the best of Constructor's knowledge, and based on Owner's inspections, the Work has reached final completion in accordance with the Contract Documents.

13.7.1 Final payment of the balance of the Contract Price shall be made to Constructor within fifteen (15) Days after Constructor has submitted to Owner a complete and accurate application for final payment and the following submissions:

- (a) an affidavit declaring any indebtedness connected with the Work to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;



- (b) as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;
- (c) release of any liens, conditioned on final payment being received;
- (d) consent of any surety, if applicable; and
- (e) any outstanding known and unreported accidents or injuries experienced by Constructor or its subcontractors at the Worksite.

13.8 Claims not reserved by Owner in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Constructor provides written identification of unsettled claims known to Constructor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

13.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 14 INDEMNITY

14.1 To the fullest extent permitted by law, Constructor shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees and Design Professional (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured under §15.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Constructor, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Constructor shall be entitled to reimbursement of any defense costs paid above Constructor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

14.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Constructor, its officers, directors, or members, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §15.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or others retained by Owner, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Owner, Design Professional, or others retained by Owner. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided in the section immediately above.

14.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Constructor, anyone directly or indirectly employed by Constructor or anyone for whose acts Constructor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Constructor under Workers' Compensation acts, disability benefit acts, or other employment benefit acts.

ARTICLE 15 INSURANCE

15.1 Before commencing the Work and as a condition precedent to payment, Constructor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Constructor shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. If requested, Constructor shall provide Owner with certificates of the insurance coverage required. Constructor's Employers'



Liability, Business Automobile Liability, and CGL policies, as required in this article, shall be written with at least the following limits of liability:

15.1.1 Employers' Liability Insurance:

- (a) **Statutory:** bodily injury by accident per accident;
- (b) **Statutory:** bodily injury by disease policy limit;
- (c) **Statutory:** bodily injury by disease per employee.

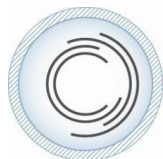
15.1.2 Business Automobile Liability Insurance \$1,000,000 per accident.

15.1.3 CGL Insurance:

- (a) \$1,000,000 per occurrence;
- (b) \$2,000,000 general aggregate;
- (c) \$2,000,000 products/completed operations aggregate;
- (d) \$1,000,000 personal and advertising injury limit.

15.2 Employers' Liability, Business Automobile Liability, and CGL coverage required in the subsection above may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Constructor shall maintain in effect all insurance coverage required in the section immediately above with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Constructor fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Constructor, or terminate this Agreement. To the extent commercially available to Constructor from its current insurance company, insurance policies required under §15.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, Constructor shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §15.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Constructor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

15.3 PROPERTY INSURANCE Unless otherwise directed in writing by Owner, before starting the Work, Constructor shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, INCLUDING EXISTING STRUCTURES. This insurance shall also: (a) name Constructor, subcontractors, subsubcontractors, suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy. The Builder's Risk Policy shall insure at least against and not exclude: (a) the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused; (b) damage resulting from defective design, workmanship, or material; (c) coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Constructor's activities or operations at the Project; (d) equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment; (e) testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their



capacity to determine whether they are fit for their intended use; and (f) physical loss resulting from terrorism.

15.3.1 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §15.3 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Constructor has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Constructor shall provide a copy of the property policy or policies obtained in compliance with §15.3.

15.3.2 If the Owner elects to purchase the property insurance required by this Agreement, including all of the same coverages and deductibles for the same duration specified in §15.3, then Owner shall give written notice to Constructor and Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §15.3. Owner may then provide insurance to protect its interests and the interests of Constructor, Subcontractors, Suppliers, and Sub subcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.

15.3.3 The Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.

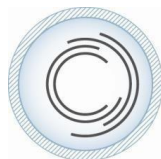
15.3.4 To the extent of the limits of Constructor's CGL specified in §15.1 or [] dollars (\$[]), whichever is more, Constructor shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent acts or omissions of Constructor, Subcontractor, Supplier, Subsubcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

15.3.5 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss from damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §15.3 until the Date of Final Completion.

15.3.6 POLLUTION LIABILITY INSURANCE Constructor is/ is not required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered. If applicable: in the following amounts: [] per occurrence, and shall apply for [] year(s) after Final Completion.

15.4 ADDITIONAL LIABILITY COVERAGE Owner shall/ shall not require Constructor to purchase and maintain liability coverage. If required, Constructor shall provide:

15.4.1 ADDITIONAL INSURED. Owner shall be named as an additional insured on Constructor's CGL insurance specified, for on-going operations and completed operations excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by



the negligent acts or omissions of Constructor, or those acting on Constructor's behalf, in the performance of Constructor's Work for Owner at the Worksite. The insurance of the Constructor and its Subcontractors (both primary and excess) shall be primary to any insurance available to the Additional Insureds. Any insurance available to the Additional Insureds shall be excess and non-contributory.

15.4.2 OCP. Constructor shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL insurance specified, or limits as otherwise required by Owner. Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly, or the costs may be reimbursed by Owner to Constructor by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the additional liability coverage. Before commencing the Work, Constructor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.

ARTICLE 16 BONDS

16.1 Performance and Payment Bonds are/ are not required of Constructor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond.

ARTICLE 17 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

17.1 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for (a) losses covered by insurance required by the Contract Documents, or (b) specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The following items of damages are excluded from this mutual waiver: []. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall require similar waivers in contracts with subcontractors and others retained for the project.

ARTICLE 18 NOTICE TO CURE AND TERMINATION

18.1 NOTICE TO CURE A DEFAULT If Constructor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Constructor may be deemed in default. If Constructor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) days after written notification, then Owner shall give Constructor a second written notice to correct the default within a three (3) business Day period. If Constructor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Owner, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Constructor, who shall be liable for such payments including reasonable overhead, profit, and attorneys' fees.

18.2 TERMINATION BY OWNER Upon expiration of the second notice for default period pursuant to §18.1, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner. If Owner's costs arising out of Constructor's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, Constructor shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid



Contract Price, Owner shall pay the difference to Constructor. If Owner exercises its rights under this section, upon the request of Constructor, Owner shall furnish to Constructor a detailed accounting of the costs incurred by Owner.

18.2.1 Owner shall make reasonable efforts to mitigate damages arising from Constructor default and shall promptly invoice Constructor for all amounts due.

18.3 TERMINATION BY CONSTRUCTOR Seven (7) Days after Owner's receipt of written notice from Constructor, Constructor may terminate this Agreement if the Work has been stopped for a thirty (30) day period through no fault of Constructor for any of the following reasons: (a) under court order or order of other governmental authorities having jurisdiction; (b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Constructor, materials are not available.

18.3.1 In addition, upon seven (7) Days' written notice to Owner, and an opportunity to cure within three (3) Days, Constructor may terminate the Agreement if Owner does any of the following: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with §6.1.1; (b) assigns this Agreement over Constructor's reasonable objection; (c) fails to pay Constructor in accordance with this Agreement and Constructor has stopped work in compliance with applicable notice provisions; or (d) otherwise materially breaches this Agreement.

18.3.2 Upon termination by Constructor pursuant to this Agreement, Constructor shall be entitled to recover from Owner payment for all work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

18.4 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 19 DISPUTE MITIGATION AND RESOLUTION

19.1 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in §10.3 and §10.4 for any claim for an increase in the Contract Price or the Contract Time, Constructor shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after Constructor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before beginning the Work. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

19.2 WORK CONTINUANCE AND PAYMENT Constructor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If Constructor continues to perform, Owner shall continue to make payments in accordance with the Agreement.

19.3 DIRECT SETTLEMENT DISCUSSIONS If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions shall conduct direct discussions and make a good faith effort to resolve such dispute.

19.4 MEDIATION Disputes between Owner and Constructor not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (AAA). The Parties shall select the mediator within fifteen (15) Days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.



19.5 BINDING DISPUTE RESOLUTION If neither direct discussions nor mediation successfully resolves the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

ARBITRATION The Parties choose binding arbitration decided by arbitrator in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. Arbitration will be used for any claim or dispute related to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

LITIGATION Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

If not indicated, then litigation is the default and not arbitration.

19.5.1 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

19.5.2 VENUE The Project location shall serve as the venue.

19.5.3 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

ARTICLE 20 MISCELLANEOUS

20.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

20.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

20.3 GOVERNING LAW The law in effect at the location of the Project shall govern.

20.4 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.



20.5 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

OWNER: []

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCTOR: []

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.

DRAFT

