BOARD OF RECREATION COMMISSIONERS
COUNTY OF MONMOUTH
NEW JERSEY

RECONSTRUCTION OF
HOMINY HILL GOLF CENTER
COLTS NECK, NJ

PROCUREMENT AND CONTRACTING REQUIREMENTS

BID No.: 0076-20

BID ADVERTISED: FRIDAY, SEPTEMBER 18, 2020
PRE-BID MEETING: MONDAY, SEPTEMBER 28, 2020 AT 10:00 AM ON SITE
BID DUE: THURSDAY, OCTOBER 15, 2020 at 10:00 AM

Prepared By:
Monmouth County Park System
805 Newman Springs Road
Lincroft, New Jersey 07738
(732)-842-4000
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MONMOUTH COUNTY
NOTICE TO BIDDERS

ADVERTISED DATE: FRIDAY, SEPTEMBER 18, 2020

TAKE NOTICE that sealed Bids for a proposed Contract for the project known as RECONSTRUCTION OF HOMINY HILL GOLF CENTER (Bid #0076-20) will be publicly received, opened and read aloud by the Purchasing Agent for the Monmouth County Board of Recreation Commissioners, outdoors in front of the Monmouth County Park System Headquarters, Thompson Park, 805 Newman Springs Road, Lincroft, New Jersey on THURSDAY, OCTOBER 15, 2020 at 10:00 AM prevailing time. *Face coverings and social distancing practices are required.*

PRE-BID INSPECTION. A pre-bid meeting is scheduled for MONDAY, SEPTEMBER 28, 2020, 10 AM at the project site. This is the only time a Park System representative will meet Contractors. Bidders are expected to examine existing conditions at the project site that will bear on the proposed work. *Face coverings and social distancing practices are required.*

BIDDING DOCUMENTS AVAILABLE. Bidders may obtain copies of the Bidding Documents on a Compact Disk (CD):
- Via Fed Ex by calling the Monmouth County Park System Purchasing Department at (732) 842-4000 ext. 4334, 4330 or 4217. (The Monmouth County Park System only assumes the responsibility for e-mail and /or fax notifications and for placing bid packet in the mail, and not for the proper and timely delivery of such notices or packets.)
- If requested by potential bidders, a Bidding Document CD may be obtained by appointment by calling the Monmouth County Park System Purchasing Department at the above phone numbers, and may be picked up at the Monmouth County Park System Headquarters Building located at Thompson Park, 805 Newman Springs Road, Lincroft, New Jersey between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday.


PROJECT LABOR AGREEMENT. The successful Bidder will be required to execute a Project Labor Agreement in the form adopted by the Monmouth County Board of Recreation Commissioners.

FORM OF BID. Bids must be made using the Proposal Form that is provided in these Bidding Documents or on copy machine reproductions thereof. Each delivered Bid must be enclosed in a
sealed opaque envelope bearing the prominent notations "BID Proposal RECONSTRUCTION OF HOMINY HILL GOLF CENTER (BID #0076-20)". The envelope must also bear the Bidder’s company name and address, and be directed to the Monmouth County Board of Recreation Commissioners, 805 Newman Springs Road, Lincroft, New Jersey 07738.

**BID GUARANTEE.** Each Bid must be accompanied by a Bid Guarantee payable to Monmouth County Board of Recreation Commissioners. The Bid Guarantee shall be in the amount of “10% of the Base Bid (as called out in the Bid Form)” or $20,000.00, whichever is the lesser amount. The Bid Guarantee shall be given by certified check, treasurer's check or bid bond at the Bidder's option.

**FORMS TO ACCOMPANY BID.** Each Bidder shall complete and submit with its Bid the following: Statement of ownership, Non-Collusion Affidavit (blank copies included in the Bidding Documents), Consent of Surety (sample of acceptable work to be included in the Bidding Documents) and Bid Guarantee, Certificate of Registration with the New Jersey Department of Labor as required under "The Public Works Contractor Registration Act" (P.L. 1999, C.238), New Jersey State Business Registration (N.J.S.A. 52:32-44). Bidders shall submit at least one (1) original of each form, with an original signature.

**CONSENT OF SURETY.** Consent of Surety must accompany each bid. The Consent of Surety shall provide that if the Contract is awarded to its principal, the Surety on behalf of its principal will post Performance, Payment and Maintenance Bonds, each of which shall be for 100% of the amount of the awarded Contract.

**RIGHTS TO REJECT BIDS.** The Monmouth County Board of Recreation Commissioners shall have the right to reject any or all Bids; to reject a Bid not accompanied by a Bid Guarantee, Consent of Surety, or any of the other documents called for by the Bidding Documents; to reject a Bid which is in any way incomplete or irregular; to reject a Bid that does not contain original signed documents; and to waive any informalities contained in the Bids.

**EQUAL OR TIED BIDS.** The Monmouth County Board of Recreation Commissioners shall have the right to award the Contract to any one of the lowest responsible Bidders whose Bids are equal to or tied.

**CONTACT REGARDING TECHNICAL QUESTIONS:** Refer any technical questions regarding this bid in writing via letter or fax to: **Joseph Sardonia** (email: Joe.Sardonia@co.monmouth.nj.us / fax: 732-842-3640). Questions regarding non-technical bidding questions may be directed to Jennifer Kaczala, QPA, Purchasing Agent, at 732-842-4000, ext. 4217.

**BY ORDER OF THE BOARD OF RECREATION COMMISSIONERS**

COUNTY OF MONMOUTH

KEVIN MANDEVILLE, CHAIRMAN
JAMES J. TRUNCER, SECRETARY-DIRECTOR
JENNIFER KACZALA, QPA, PURCHASING AGENT
PROPOSAL

PROJECT NAME: RECONSTRUCTION OF THE HOMINY HILL GOLF CENTER AND RELATED WORK, Colts Neck, NJ

SUBMITTED TO: JENNIFER KACZALA, QPA, PURCHASING AGENT
Monmouth County Park System
805 Newman Springs Rd, Lincroft, New Jersey

hereinafter known as OWNER.

SUBMITTED BY: _________________________________
(type or print Bidder's Legal Name)
hereinafter known as BIDDER.

BE IT KNOWN:

BIDDER is thoroughly familiar with all provisions and requirements of the Bidding Documents and the conditions under which the Work is to be performed;

BIDDER finds that the proposed Contract Documents are complete, and that they are appropriate for the full, proper, and timely performance of the proposed Contract;

BIDDER possesses and commits to the OWNER the technical knowledge, practical experience, management skills, and all other resources that will be needed to perform the Work contemplated by, described in, and reasonably inferred from the proposed Contract Documents;

BIDDER represents that this Bid is legitimate, and that the various documents which accompany this Bid are accurate, complete and true.

NOW THEREFORE BIDDER HEREBY PROPOSES to furnish all supervision, labor, materials, services, tools, equipment, licenses, permits, and payments of lawful fees and taxes which may be necessary to fully perform the OWNER's proposed contract.
PART A: BASE BID

The Work required by the Contract Documents includes, but is not limited to, the furnishing of all labor, materials, equipment and services necessary to complete the RECONSTRUCTION OF THE HOMINY HILL GOLF CENTER (Building 1303) AND RELATED WORK, 92 Mercer Road Colts Neck, NJ 07722 in accordance with the Drawings and Project Specifications dated August 2020, prepared by Netta Architects, 1084 Route 22 West, Mountainside, NJ 07092.

The Project consists of all work associated with the construction of the renovations, alterations and additions to the existing building including; demolition and reconfiguration of interior spaces, addition of a new lobby area to include an elevator, new restrooms, kitchen and vending areas, pro shop, renovated multipurpose hall, all new MEP, alarms and communications, and fire suppression. Site improvements include expanded parking, site lighting, new walks and patios, expanded cart area, cart paths, new septic system, site drainage, site electric, emergency generator, landscaping and restoration. Project shall include all associated Civil, Structural, Mechanical, Electrical, and Plumbing work per the Plans and Specifications.

| TOTAL BASE BID PRICE | $ ____________________________ |
| IN WORDS | T O T A L |

PART B: ALTERNATE BID ITEMS

ALTERNATE BID #1 – DEDUCT LANDSCAPING - Eliminate all proposed landscaping improvements shown on the landscaping plan, including trees shrubs and groundcover. All proposed beds and landscape area to be topsoiled and seeded as per restoration specifications

Delete $____________________________________________

Delete Amount (words) ____________________________________
ALTERNATE BID #2 – DEDUCT SITE LIGHTING  Eliminate 15 of the 18 Type “A” (single fixture) light poles and 7 of the 11 Type “B” (double fixture) light poles. All bases, wiring etc shall be installed as shown of the Lighting Plan. Only the poles and fixtures are to be eliminated.

Delete $___________________________________________________

Delete Amount (words) ______________________________________

PART C: ALLOWANCES
The following are allowances that the Contractor is to include in his Total Base Bid in Part A. Allowances shall be as per the specifications

<table>
<thead>
<tr>
<th>Allowance</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner’s Contingency Allowance</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>Security</td>
<td>$ 10,000.00</td>
</tr>
<tr>
<td>Signage</td>
<td>$  6,000.00</td>
</tr>
<tr>
<td>Telephone/Data</td>
<td>$ 16,000.00</td>
</tr>
</tbody>
</table>

PART D: SCHEDULE OF VALUES
As an aid to evaluating the bid, not for payment. Total shall equal the total base bid price and include prices of prime subs and all allowances. Apparent lowest responsible bidder will be required to submit a detailed schedule of values within 10 days of request by the owner to help in the review and evaluation of bids.

1. General Conditions $____________
2. Abatement $____________
3. Sitework $____________
4. Demolition $____________
5. General Construction $____________
6. Structural Steel $____________
7. HVAC $____________
8. Plumbing $____________
9. Fire Protection $____________
10. Electrical $____________
11. Septic (from 5 feet outside building) $____________

TOTAL (Items 1.-11. Inclusive) $____________
PART E: SCHEDULE OF UNIT PRICES

UNIT PRICES

The following Unit Prices shall be the prices for any additions to or deductions from the original scope of work under the Contract. This sheet shall be completed in full, and submitted with the Bid Form. The CONTRACTOR should recognize that these unit prices shall be enforced for as long as the Contract is in force. All prices are installed price.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Unclassified Excavation (Taken Offsite)</td>
<td>TN</td>
<td>$</td>
</tr>
</tbody>
</table>

LEGEND

LF = Linear Feet   SF = Square Feet   PH = Per Head   CY = Cubic Yard   EA = Each   TN = Ton

PART F: OWNER's EVALUATION OF BIDS

Under this Contract, the Owner may elect to award, in addition to the Work covered under the Base Bid, work that is included as one or more of the Alternate bid items as described above and shown on the Contract Documents. The Owner reserves the right to award and contract for the Work included in the Base Bid or to award the Base Bid plus any/all Alternate Bid item or items. The evaluation of the bids for the determination of the apparent low bidder will be based upon the total amount of the Base Bid plus all Alternate Bid items, if any, that the Owner elects to include in the award. The decision to award a portion or all of the Alternate Bid items will be made by the Owner after the receipt of bids and will be based on the bid prices and available funding. All bidders MUST submit prices for the Base Bid and ALL of the Alternate Bid items. Any Bid which does not contain bid prices for the Base Bid and all of the Alternate Bid items may be considered non-responsive. Only a single award will be made to a single Contractor.

**CONTRACTOR MUST SUBMIT A COMPLETE BID PROPOSAL PACKET.**

PART G: DESIGNATED SUBCONTRACTORS

BIDDER warrants that, if awarded the Contract, the Sub-bidders named below will be the actual subcontractors who will perform the enumerated classes of work. BIDDER further warrants that the Subbid prices shown below are the Designated Subcontractor's net subsbids and do not include any markups by the BIDDER. (See Article 10 of the Supplementary Instructions To Bidders, especially subparagraph 10.1.2) It is understood that those subbid prices will establish the basis for the OWNER’S payments to Designated Subcontractors in accordance with N.J.S.A. 40A:11-16 and the Supplementary General Conditions of the Contract. The BIDDER may name itself as the Designated Subcontractor for any of the Work that it is qualified to perform.
STRUCTURAL STEEL AND ORNAMENTAL IRON WORK:

(Designated Contractors’s Legal Name)

(Legal Address)

Federal Tax ID # or Social Security # ________________________________

Contract Amount $________________________

SUB-BID for Structural Steel and Ornamental Iron Work

$____________________

LUMP SUM

HVAC, STEAM AND HOT WATER HEATING AND ALL KINDRED WORK:

(Designated Contractors’s Legal Name)

(Legal Address)

Federal Tax ID # or Social Security # ________________________________

License Number     _______________________________

Contract Amount $________________________

SUB-BID for HVAC, Steam and Hot Water Heating

$____________________

LUMP SUM

ELECTRICAL WORK:

(Designated Contractors’s Legal Name)

(Legal Address)

Federal Tax ID # or Social Security # ________________________________

License Number     _______________________________

Contract Amount $________________________

SUB-BID for Electrical Work

$____________________

LUMP SUM
PLUMBING, GAS FITTING AND ALL KINDRED WORK:

(Designated Contractors’s Legal Name)

(Legal Address)

Federal Tax ID # or Social Security # ________________________________

License Number ________________________________

Contract Amount $______________________________

SUB-BID for Plumbing and Gas Fitting $________________________

LUMP SUM

PART F: CONTRACT TIME AND LIQUIDATED DAMAGES

The CONTRACT TIME shall be 410 calendar days, commencing on the day next following the Contractors receipt of the NOTICE TO PROCEED from the OWNER. It is agreed by the parties that this CONTRACT TIME subsequently may be adjusted for cause in accordance with the terms and conditions of the General Conditions Of The Contract.

LIQUIDATED DAMAGES (not a penalty) shall be assessed at the rate of $250 for contracts in the maximum amount of $500,000 and $500 for contracts in excess of $500,000 for each and every calendar day that completion of the work overruns the CONTRACT TIME.

PART G: ACKNOWLEDGMENT OF ADDENDA

BIDDER acknowledges receipt of the following listed Addenda that have been issued for this Project. BIDDER warrants that this Bid fully accounts for all requirements, terms and conditions of these Addenda. (BIDDER must type or print acknowledged Addenda numbers and dates --- OR check the box indicating that NO ADDENDA WERE RECEIVED.

Addendum #________ Date Received:________________________
Addendum #________ Date Received:________________________
Addendum #________ Date Received:________________________

☐ NO ADDENDA WERE RECEIVED
PART H: BIDDER'S EXECUTION OF PROPOSAL

The BIDDER, for good and valuable consideration, namely the privilege of bidding for the OWNER's proposed Contract, and the Owner's assurance that the Contract will be awarded to the lowest responsible BIDDER, provided that the cost thereof would be within the amount budgeted and funded by the OWNER for the Work, hereby offers this executed Proposal as a unilateral contract to perform all Work of the Project, with the understanding that it will become mutually binding if it is accepted by the OWNER.

BIDDER's Legal Name (as shown on page 1)

________________________________________________________________________
(type or print)

________________________________________________________________________
(authorized signature) (date signed)

________________________________________________________________________
(type or print name signed above) (title)

BIDDER's Legal Address: BIDDER's Mailing Address (if different):
________________________________________________________________________
(street address) (street address... P.O. Box...)

________________________________________________________________________
(city...town...state...zip) (city...town...state...zip)

Federal Tax ID # or Social Security # ________________________________

Phone: ________________________________ Cell Phone: ________________________________

Fax #: ________________________________ E-Mail: ________________________________

END OF PROPOSAL
Instructions to Bidders

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

Reconstruction of Hominy Hill Golf Center
Colts Neck, NJ 07722

THE OWNER:
(Name, legal status, address, and other information)

Monmouth County Park System
805 Newman Springs Road
Colts Neck, NJ 07722

THE ARCHITECT:
(Name, legal status, address, and other information)

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5 CONSIDERATION OF BIDS
6 POST-BID INFORMATION
7 PERFORMANCE BOND AND PAYMENT BOND
8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

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

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

FEDERAL, STATE, AND LOCAL LAWS MAY IMPOSE REQUIREMENTS ON PUBLIC PROCUREMENT CONTRACTS. CONSULT LOCAL AUTHORITIES OR AN ATTORNEY TO VERIFY REQUIREMENTS APPLICABLE TO THIS PROCUREMENT BEFORE COMPLETING THIS FORM.

It is intended that AIA Document G12—2017, Owner's Instructions to the Architect, Parts A and B will be completed prior to using this document.
ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the Proposed Contract Documents. The Bidding Requirements consist of the advertisement or invitation to bid, Instructions to Bidders, supplementary instructions to bidders, the bid form, and any other bidding forms. The Proposed Contract Documents consist of the unexecuted form of Agreement between the Owner and Contractor and that Agreement’s Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda, and all other documents enumerated in Article 8 of these Instructions.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, or in other Proposed Contract Documents apply to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect, which, by additions, deletions, clarifications, or corrections, modify or interpret the Bidding Documents.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents, to which Work may be added or deducted by sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from, or that does not change, the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment, or services, or a portion of the Work, as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment, or labor for a portion of the Work.

ARTICLE 2 BIDDER’S REPRESENTATIONS

§ 2.1 By submitting a Bid, the Bidder represents that:
1. the Bidder has read and understands the Bidding Documents;
2. the Bidder understands how the Bidding Documents relate to other portions of the Project, if any, being bid concurrently or presently under construction;
3. the Bid complies with the Bidding Documents;
4. the Bidder has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Bidder’s observations with the requirements of the Proposed Contract Documents;
5. the Bid is based upon the materials, equipment, and systems required by the Bidding Documents without exception; and
6. the Bidder has read and understands the provisions for liquidated damages, if any, set forth in the form of Agreement between the Owner and Contractor.

ARTICLE 3 BIDDING DOCUMENTS

§ 3.1 Distribution
§ 3.1.1 Bidders shall obtain complete Bidding Documents, as indicated below, from the issuing office designated in the advertisement or invitation to bid, for the deposit sum, if any, stated therein.

(Indicate how, such as by email, website, host site platform, paper copy, or other method Bidders shall obtain Bidding Documents.)
§ 3.1.2 Any required deposit shall be refunded to Bidders who submit a bona fide Bid and return the paper Bidding Documents in good condition within ten days after receipt of Bids. The cost to replace missing or damaged paper documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the paper Bidding Documents, and the Bidder’s deposit will be refunded.

§ 3.1.3 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the advertisement or invitation to bid, or in supplementary instructions to bidders.

§ 3.1.4 Bidders shall use complete Bidding Documents in preparing Bids. Neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete Bidding Documents.

§ 3.1.5 The Bidding Documents will be available for the sole purpose of obtaining Bids on the Work. No license or grant of use is conferred by distribution of the Bidding Documents.

§ 3.2 Modification or Interpretation of Bidding Documents
§ 3.2.1 The Bidder shall carefully study the Bidding Documents, shall examine the site and local conditions, and shall notify the Architect of errors, inconsistencies, or ambiguities discovered and request clarification or interpretation pursuant to Section 3.2.2.

§ 3.2.2 Requests for clarification or interpretation of the Bidding Documents shall be submitted by the Bidder in writing and shall be received by the Architect at least seven days prior to the date for receipt of Bids. (Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall submit requests for clarification and interpretation.)

§ 3.2.3 Modifications and interpretations of the Bidding Documents shall be made by Addendum. Modifications and interpretations of the Bidding Documents made in any other manner shall not be binding, and Bidders shall not rely upon them.

§ 3.3 Substitutions
§ 3.3.1 The materials, products, and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution.

§ 3.3.2 Substitution Process
§ 3.3.2.1 Written requests for substitutions shall be received by the Architect at least ten days prior to the date for receipt of Bids. Requests shall be submitted in the same manner as that established for submitting clarifications and interpretations in Section 3.2.2.

§ 3.3.2.2 Bidders shall submit substitution requests on a Substitution Request Form if one is provided in the Bidding Documents.

§ 3.3.2.3 If a Substitution Request Form is not provided, requests shall include (1) the name of the material or equipment specified in the Bidding Documents; (2) the reason for the requested substitution; (3) a complete description of the proposed substitution including the name of the material or equipment proposed as the substitute, performance and test data, and relevant drawings; and (4) any other information necessary for an evaluation. The request shall include a statement setting forth changes in other materials, equipment, or other portions of the Work, including changes in the work of other contracts or the impact on any Project Certifications (such as LEED), that will result from incorporation of the proposed substitution.

§ 3.3.3 The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect’s decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.4 If the Architect approves a proposed substitution prior to receipt of Bids, such approval shall be set forth in an Addendum. Approvals made in any other manner shall not be binding, and Bidders shall not rely upon them.
§ 3.3.5 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

§ 3.4 Addenda
§ 3.4.1 Addenda will be transmitted to Bidders known by the issuing office to have received complete Bidding Documents.

(Indicate how, such as by email, website, host site/platform, paper copy, or other method. Addenda will be transmitted.)

§ 3.4.2 Addenda will be available where Bidding Documents are on file.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids, except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Prior to submitting a Bid, each Bidder shall ascertain that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

ARTICLE 4 BIDDING PROCEDURES
§ 4.1 Preparation of Bids
§ 4.1.1 Bids shall be submitted on the forms included with or identified in the Bidding Documents.

§ 4.1.2 All blanks on the bid form shall be legibly executed. Paper bid forms shall be executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and numbers, unless noted otherwise on the bid form. In case of discrepancy, the amount entered in words shall govern.

§ 4.1.4 Edits to entries made on paper bid forms must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter “No Change” or as required by the bid form.

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder’s refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall neither make additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name and legal status of the Bidder. As part of the documentation submitted with the Bid, the Bidder shall provide evidence of its legal authority to perform the Work in the jurisdiction where the Project is located. Each copy of the Bid shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further name the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached, certifying the agent’s authority to bind the Bidder.

§ 4.1.8 A Bidder shall incur all costs associated with the preparation of its Bid.

§ 4.2 Bid Security
§ 4.2.1 Each Bid shall be accompanied by the following bid security:

(Insert the form and amount of bid security.)

§ 4.2.2 The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and shall, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount
of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. In the event the Owner fails to comply with Section 6.2, the amount of the bid security shall not be forfeited to the Owner.

§ 4.2.3 If a surety bond is required as bid security, it shall be written on AIA Document A310™, Bid Bond, unless otherwise provided in the Bidding Documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of an acceptable power of attorney. The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 4.2.4 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until (a) the Contract has been executed and bonds, if required, have been furnished; (b) the specified time has elapsed so that Bids may be withdrawn; or (c) all Bids have been rejected. However, if no Contract has been awarded or a Bidder has not been notified of the acceptance of its Bid, a Bidder may, beginning days after the opening of Bids, withdraw its Bid and request the return of its bid security.

§ 4.3 Submission of Bids

§ 4.3.1 A Bidder shall submit its Bid as indicated below:

(Indicate how, such as by website, host site platform, paper copy, or other method Bidders shall submit their Bid.)

§ 4.3.2 Paper copies of the Bid, the bid security, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder’s name and address, and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation “SEALED BID ENCLOSED” on the face thereof.

§ 4.3.3 Bids shall be submitted by the date and time and at the place indicated in the invitation to bid. Bids submitted after the date and time for receipt of Bids, or at an incorrect place, will not be accepted.

§ 4.3.4 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

§ 4.3.5 A Bid submitted by any method other than as provided in this Section 4.3 will not be accepted.

§ 4.4 Modification or Withdrawal of Bid

§ 4.4.1 Prior to the date and time designated for receipt of Bids, a Bidder may submit a new Bid to replace a Bid previously submitted, or withdraw its Bid entirely, by notice to the party designated to receive the Bids. Such notice shall be received and duly recorded by the receiving party on or before the date and time set for receipt of Bids. The receiving party shall verify that replaced or withdrawn Bids are removed from the other submitted Bids and not considered. Notice of submission of a replacement Bid or withdrawal of a Bid shall be worded so as not to reveal the amount of the original Bid.

§ 4.4.2 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids in the same format as that established in Section 4.3, provided they fully conform with these Instructions to Bidders. Bid security shall be in an amount sufficient for the Bid as resubmitted.

§ 4.4.3 After the date and time designated for receipt of Bids, a Bidder who discovers that it made a clerical error in its Bid shall notify the Architect of such error within two days, or pursuant to a timeframe specified by the law of the jurisdiction where the Project is located, requesting withdrawal of its Bid. Upon providing evidence of such error to the reasonable satisfaction of the Architect, the Bid shall be withdrawn and not resubmitted. If a Bid is withdrawn pursuant to this Section 4.4.3, the bid security will be attended to as follows:

(State the terms and conditions, such as Bid rank, for returning or retaining the bid security.)
ARTICLE 5 CONSIDERATION OF BIDS
§ 5.1 Opening of Bids
If stipulated in an advertisement or invitation to bid, or when otherwise required by law, Bids properly identified and received within the specified time limits will be publicly opened and read aloud. A summary of the Bids may be made available to Bidders.

§ 5.2 Rejection of Bids
Unless otherwise prohibited by law, the Owner shall have the right to reject all Bids.

§ 5.3 Acceptance of Bid (Award)
§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest responsive and responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. Unless otherwise prohibited by law, the Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner’s judgment, is in the Owner’s best interests.

§ 5.3.2 Unless otherwise prohibited by law, the Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the lowest responsive and responsible Bidder on the basis of the sum of the Base Bid and Alternates accepted.

ARTICLE 6 POST-BID INFORMATION
§ 6.1 Contractor’s Qualification Statement
Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request and within the timeframe specified by the Architect, a properly executed AIA Document A305™, Contractor’s Qualification Statement, unless such a Statement has been previously required and submitted for this Bid.

§ 6.2 Owner’s Financial Capability
A Bidder to whom award of a Contract is under consideration may request in writing, fourteen days prior to the expiration of the time for withdrawal of Bids, that the Owner furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner’s obligations under the Contract. The Owner shall then furnish such reasonable evidence to the Bidder no later than seven days prior to the expiration of the time for withdrawal of Bids. Unless such reasonable evidence is furnished within the allotted time, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

§ 6.3 Submittals
§ 6.3.1 After notification of selection for the award of the Contract, the Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, submit in writing to the Owner through the Architect:
   1. a designation of the Work to be performed with the Bidder’s own forces;
   2. names of the principal products and systems proposed for the Work and the manufacturers and suppliers of each; and
   3. names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

§ 6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder’s option, withdraw the Bid or submit an acceptable substitute person or entity. The Bidder may also submit any required adjustment in the Base Bid or Alternate Bid to account for the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.
ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

§ 7.1 Bond Requirements

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 7.1.4 Unless otherwise indicated below, the Penal Sum of the Payment and Performance Bonds shall be the amount of the Contract Sum.

(If Payment or Performance Bonds are to be in an amount other than 100% of the Contract Sum, indicate the dollar amount or percentage of the Contract Sum.)

§ 7.2 Time of Delivery and Form of Bonds

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to commence sooner in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix to the bond a certified and current copy of the power of attorney.

ARTICLE 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

§ 8.1 Copies of the proposed Contract Documents have been made available to the Bidder and consist of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, unless otherwise stated below.

(Insert the complete AIA Document number, including year, and Document title.)

.2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds, unless otherwise stated below.

(Insert the complete AIA Document number, including year, and Document title.)

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction, unless otherwise stated below.

(Insert the complete AIA Document number, including year, and Document title.)

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013.)
## Drawings

<table>
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## Specifications

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## Addenda:

<table>
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<th>Pages</th>
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## Other Exhibits:

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

- [ ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
  **(Insert the date of the E204-2017.)**

- [ ] The Sustainability Plan:

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- [ ] Supplementary and other Conditions of the Contract:

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<th>Document</th>
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## Other documents listed below:

(List here any additional documents that are intended to form part of the Proposed Contract Documents.)
Additions and Deletions Report for
AIA® Document A701™ – 2018

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:24:51 ET on 07/10/2020.

PAGE 1

Reconstruction of Hominy Hill Golf Center
Colts Neck, NJ 07722

...

Monmouth County Park System
805 Newman Springs Road
Colts Neck, NJ 07722

PAGE 6

Unless otherwise prohibited by law, the Owner shall have the right to reject any or all Bids.
Certification of Document’s Authenticity
AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:24:51 ET on 07/10/2020 under Order No. 8986884899 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A701™ – 2018, Instructions to Bidders, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)
GENERAL CONTRACTOR'S QUALIFICATIONS AND REFERENCES

References must be from jobs similar to this project in scope, size, design, and difficulty.

References:

1. Name of Project: __________________________________________________________
   Address: ____________________________
   Description of Work: ______________________________________________________
   Year Installed: ______________________
   Name of Contact: ______________________
   Phone Number of Contact: ______________________

2. Name of Project: __________________________________________________________
   Address: ____________________________
   Description of Work: ______________________________________________________
   Year Installed: ______________________
   Name of Contact: ______________________
   Phone Number of Contact: ______________________

3. Name of Project: __________________________________________________________
   Address: ____________________________
   Description of Work: ______________________________________________________
   Year Installed: ______________________
   Name of Contact: ______________________
   Phone Number of Contact: ______________________

4. Name of Project: __________________________________________________________
   Address: ____________________________
   Description of Work: ______________________________________________________
   Year Installed: ______________________
   Name of Contact: ______________________
   Phone Number of Contact: ______________________

5. Name of Project: __________________________________________________________
   Address: ____________________________
   Description of Work: ______________________________________________________
   Year Installed: ______________________
   Name of Contact: ______________________
   Phone Number of Contact: ______________________
NOTICE

THE PUBLIC WORKS CONTRACTOR REGISTRATION ACT
(P.L.1999, s.238, as amended by P.L.2003,c.91)

Revision to Existing Law effective August 17, 2003:

34:11-56.51 Registration required for contractors, subcontractors.

4. No contractor shall bid on any contract for public work as defined in section 2 of
P.L.1963,c.150 (C.34:11-56.26) unless the contractor is registered pursuant to this act. No
contractor shall list a subcontractor in a bid proposal for the contract unless the subcontractor is
registered pursuant to P.L.1999, c.238 (C34:11-56.48 et seq.) at the time the bid is made. No
contractor or subcontractor, including a subcontractor not listed in the bid proposal, shall engage
in the performance of any public work subject to the contract, unless the contractor or
subcontractor is registered pursuant to that act.

34:11.56.55 Submission of all subcontractor registration certificates by contractor.

8. Each contractor shall, after the bid is made and prior to the awarding of the contract, submit to
the public entity the certificates of registration for all subcontractors listed in the bid proposal.
Applications for registration shall not be accepted as a substitute for a certificate of registration
for the purposes of this section.

L.1999,c.238,s.8; amended 2003,c.91., s4.

Registration now pertains to ALL ‘PUBLIC WORKS” not just buildings with public
access.
NEW JERSEY BUSINESS REGISTRATION REQUIREMENTS
GOODS, SERVICES, AND CONSTRUCTION* CONTRACTS

Proof of valid business registration (a Business Registration Certificate) with the New Jersey Department of Treasury, Division of Revenue must be submitted to the contracting agency prior to the award of any contract, including purchase orders. No contract will be awarded without proof of such business registration. N.J.S.A. 52:32-44 imposes the following requirements on contractors and on all subcontractors that knowingly enter into a contract, or construct a construction project, with a contractor in the fulfillment of a contract with a contracting agency.

*In the case of a construction contract, “subcontractor” shall mean only designated subcontractors who are required by N.J.S.A. 40A:11-16 to be named in the submission of a bid.

A subcontractor named in a bid or other proposal made by a contractor to a contracting agency shall provide a copy of its business registration to the contractor who shall provide it to the contracting agency. The contractor shall provide the contracting agency with the business registration of the contractor and that of any named subcontractors prior to the time a contract is awarded.

The contractor shall maintain and submit to the contracting agency a list of subcontractors and their addresses that may be updated from time to time during the course of the contract performance. Before final payment of the contract is made by the contracting agency, the contractor shall submit a complete and accurate list and proof of business registration of each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used.

For the term of the contract, the contractor and each of its affiliates and each subcontractor and each of its affiliates (N.J.S.A. 52:32-44 (g) (3)) shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the “Sales and Use Tax Act” (N.J.S.A. 54:32 B-1, et seq.) on all taxable sales of tangible personal property delivered into this state.

A business organization that fails to provide proof of business registration or provides false business registration information shall be liable to a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration not properly provided or maintained under a contract with a contracting agency.

Sample Business Registration Certificates are attached for convenience. Questions on obtaining a Business Registration Certificate or on the law and its requirements can be directed to the Division of Revenue at (609) 292-9292.

(Revised 5/2017)
These are samples of business registration certificates.

**STATE OF NEW JERSEY**
**BUSINESS REGISTRATION CERTIFICATE**

<table>
<thead>
<tr>
<th>Taxpayer Name:</th>
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<tr>
<td>Trade Name:</td>
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<td>Address:</td>
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<tr>
<td>Certificate Number:</td>
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<td>Date of Issuance:</td>
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</table>

**For Office Use Only:**

**OR**

**STATE OF NEW JERSEY**
**BUSINESS REGISTRATION CERTIFICATE**

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<thead>
<tr>
<th>TAXPAYER NAME:</th>
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<tbody>
<tr>
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<td>ISSUANCE DATE:</td>
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<td>EFFECTIVE DATE:</td>
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*FORM-BRO008-01*

*(This certificate is NOT assignable or transferable. It must be prominently displayed at above address.)*

(Revised 5/2017)
SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

Preface. These Supplementary Instructions To Bidders modify AIA Document A701, “Instructions To Bidders,” Fifteenth Edition (1997). Provisions that are not deleted, replaced or changed by these Supplementary Instructions To Bidders shall remain in full force and effect.

Overall Change. Substitute the term “Design Professional” wherever the term “Architect” appears in the above cited Instruction To Bidders. The Design Professional is the Board’s consultant or employee who prepared the plans and specifications of the Work to be performed under the Contract.

ARTICLE 1
DEFINITIONS

1.1 REPLACE “Advertisement or Invitation to Bid” in line 2 with: “advertised Notice To Bidders”

REPLACE 1.3:

1.3 Addenda are written or graphic instruments that modify the Bidding Documents by additions, deletions, clarifications or corrections.

ADD five Paragraphs:

1.10 The Owner is the Board of Recreation Commissioners of the County of Monmouth, a municipal corporation of the State of New Jersey.

1.11 “Purchasing Agent” means the Monmouth County Park System’s Purchasing Agent(s), Department of Purchasing, Administration Building, Thompson Park, 805 Newman Springs Road, Lincroft, New Jersey 07738 (Phone: 732-842-4000, FAX: 732-842-4162).

1.12 Business days” means days on which Monmouth County Park System’s offices are open for the conduct of public business.

1.13 Successful Bidder” means the Bidder to whom the Contract has been awarded, prior to the Owner’s execution of the Agreement.

ARTICLE 2
BIDDER’S REPRESENTATIONS

ADD One Paragraph:

2.1.5 The bidder has reviewed the contract time as indicated in the Bid Documents and agrees that project can be completed within that time frame.
ARTICLE 3
BIDDING DOCUMENTS

3.1 COPIES

3.1.1 REPLACE the second, third and fourth sentences with: “Deposits will be returned to the Bidders only if the Contract is not awarded to any Bidder. In that event the deposits will be immediately refunded to Bidders who return their Bidding Documents in reasonable condition within 90 calendar days of their receipt of written notice that the Owner has elected to not award the proposed Contract. [N.J.S.A. 40A:11-24]

3.1.3 ADD after “Bidders” in first line: “or subbidders”.

3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

3.2.1 ADD at end: “A copy of each such report also shall be submitted to the Purchasing Agent.”

3.2.2 REPLACE “at least seven days” in line 2 with: “and Owner at least ten business days”

3.3 SUBSTITUTIONS

3.3.2 ADD after “Architect” in lines 2 and 9: “and Owner”

3.3.3 REPLACE “Architect approves” in line 1 with: “Design Professional and Owner approve”

ADD at end: “The Design Professional’s and Owner’s rejection of a proposed substitution will be made in writing only to the proposer.”

REPLACE 3.3.4:

3.3.4 The Contractor, after award of the Contract, may propose substitutions as provided for by the General Conditions of the Contract as supplemented.

REPLACE 3.4:

3.4 ADDENDA

3.4.1 Addenda may be issued by the Owner to revise or interpret the Bidding Documents, or to accomplish any other legitimate purposes that would serve the Owner’s best interests.

3.4.2.1 Public notice of Addenda shall be provided no later than seven days, Saturday, Sundays or holidays excepted, prior to the date for acceptance of bids, to any person who has submitted a bid or who has received a bid package in any of the following ways: i) in writing by certified mail or ii) by certified facsimile transmission, meaning that the sender’s facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or iii) by a delivery service that provides certification of delivery to the sender.

3.4.3 All Addenda that have been issued by the Owner will be available for inspection at the offices of the Purchasing Agent.
3.4.4 Each Bidder must ascertain prior to submitting a Bid that it has obtained all Addenda that have been issued, and must acknowledge their receipt of same as provided for by the Bid Form.

ARTICLE 4
BIDDING PROCEDURES

4.1 PREPARATION OF BIDS

REPLACE 4.1.1:

4.1.1 Bids shall be made using the Owner’s pre-printed Bid Form contained in these Supplementary Instructions To Bidders or copy machine or other reproductions thereof. The submitted Bid Form must be signed in ink by the Bidder.

DELETE 4.1.3

ADD subparagraph

4.1.8 If the Bidder intends to complete the Work in less time than required by Bidding Documents or the Contract Documents, it shall indicate its intended completion date in its Bid in a clear and conspicuous manner.

REPLACE 4.2:

4.2 SECURITY

4.2.1 Each Bid must be accompanied by a Bid Guarantee in the amount of “10% of the Base Bid plus all add-Alternates” or $20,000, whichever is the lesser amount.

4.2.2 Bid Guarantees shall be made payable to “Monmouth County Board of Recreation Commissioners,” and, at the option of the Bidder, may be given by a treasurer’s or certified check, or by Bid Bond.

4.2.2.1 Checks must be payable in U. S. Dollars and be drawn on a bank that is authorized to conduct business in the United States.

4.2.2.2 Bid Bonds must be posted by a surety that is licensed to conduct business and authorized to post such bonds in the State of New Jersey.

4.2.3 The Owner will immediately reject any Bid that is not accompanied by a proper Bid Guarantee.

4.2.4 The Bid Guarantees that have been posted by all but the apparent three lowest Bidders will be returned within three business days after the opening of Bids.

4.2.5 The Bid Guarantees that have been posted by the apparent three lowest Bidders will be returned within three business days after the Owner has executed a Contract with the lowest responsible Bidder.

4.3 SUBMISSION OF BIDS

4.3.1 DELETE “, if any,” from line 1.

4.3.2 REPLACE “prior to” in line 1 with: “not later than”
4.3.3  ADD: “The Owner shall not be held responsible for Bids that are delivered later than the time and date set for the receipt of Bids.”

4.4  MODIFICATION OR WITHDRAWAL OF BID

4.4.1  REPLACE “stipulated time” in line s 1 and 2 with: “60 calendar day”

ADD subparagraph:

4.4.5  New Non-Collusion Affidavits (see Exhibit B) must accompany any resubmitted Bids or any written confirmations of Bid modifications.

ADD Paragraph:

4.5  RELEASE OF BID

4.5.1  A Bidder may seek release of its opened Bid only if there is an excusable material error in the Bid price(s).

4.5.1.1  The Bidder’s signed written request for release of its Bid must be received by the Purchasing Agent within a reasonable time after the opening of Bids. The Bidder’s request must provide all information that is pertinent to the Bidder’s reason for asking the Owner to release its Bid.

4.5.1.2  The Owner shall have the sole right to determine whether or not a Bid will be released. The Owner’s written findings and conclusive determination in the matter will be issued within a reasonable time after receiving the Bidder’s request.

ARTICLE 5
CONSIDERATION OF BIDS

5.1  OPENING OF BIDS

5.1.1  DELETE last sentence.

5.2  REJECTION OF BIDS

ADD clause:

5.2.1  The Owner reserves the right to reject any Bid which in its sole discretion is unreasonably unbalanced. A Bid may be found to be unreasonably unbalanced if it includes nominal item prices and/or excessive item prices which: (a) are likely to result in the Bidder claiming progress payments substantially greater than the reasonable value of the work actually performed; or (b) expose the Owner to a realistic risk of claim(s) for payment(s) at excessive unit prices for actual quantities substantially greater than the Owner’s original estimate(s).

5.3  ACCEPTANCE OF BID (AWARD)

5.3.1  ADD clause:

5.3.1.1  The Owner intends to award a single overall Contract for the Work, or to reject all Bids, within 60 calendar days after the receipt of Bids unless the period is extended by mutual agreement of the parties.
5.3.2  REPLACE all text following “Documents” with “and” to determine the low bidder as described in the Proposal Page accompanying the bid

ADD four subparagraphs:

5.3.3  The Owner shall have the right to award the Contract to any one of the lowest responsible Bidders whose Bids are equal or tied.

5.3.4  Article 12 of these Supplementary Instructions to Bidders sets forth the conditions that will govern the Owner’s consideration and treatment of Unit Price Bid Items.

5.3.5  Article 15 of these Supplementary Instructions to Bidders sets forth the conditions that must be fully satisfied by the successful Bidder before the Owner may execute the Agreement.

5.3.6  The Owner shall have the right to check the addition of all prices entered on any Bid Form. The Owner will unilaterally substitute correct totals wherever a Bidder’s entries are incorrect due to faulty arithmetic. In each such instance the Bidder will be informed of the correction(s) made by the Owner.

ARTICLE 6
POST-BID INFORMATION

6.1  CONTRACTOR’S QUALIFICATION STATEMENT

REPLACE 6.1:

6.1.1  The apparent lowest responsible Bidder(s), and the Designated Subcontractors, must submit to the Design Professional and Owner properly executed Contractor’s Qualification Statements (AIA Document A305) within ten business days of its receipt of the Owner’s written request.

6.1.1  The Bidder and its Designated Subcontractors shall promptly furnish any additional related information that the Owner reasonably may request to amplify or clarify their Contractor’s Qualification Statements.

6.1.1  The Bidder must promptly furnish to the Design Professional and Owner all other information called for by Paragraph 6.3.

6.1.1  The Owner will carefully consider all information so provided, and such other information that the Owner may have at its disposal, to determine if, in the Owner’s judgment the Bidder and its Designated Subcontractors are responsible bidders who possess sufficient experience, financial ability, equipment, and facilities that will be needed for them to properly perform the Contract within the Contract Time.

6.2  OWNER’S FINANCIAL CAPABILITY

REPLACE 6.2:

6.2  The Owner, before it executes the Contract, is required by New Jersey Law to allocate funds sufficient to meet its contractual obligations to the Contractor.

DELETE 6.3.3
ARTICLE 7

PERFORMANCE, PAYMENT AND MAINTENANCE BONDS

7.1 BOND REQUIREMENTS

7.1.1 The Successful Bidder must post Performance and Payment Bonds with the Owner within 14 business days of the Bidder’s receipt of the Owner’s written notice of award of the Contract. The Contractor will be required to post a Maintenance Bond with its signed Certificate of Substantial Completion.

7.1.2 These Bonds must meet the applicable requirements of N.J.S.A. 2A:44-143 to -147, shall be in a form that is acceptable to the Owner, and must be given by a surety that is licensed to conduct business and authorized to post such bonds in New Jersey.

7.1.3 PERFORMANCE BOND. The Performance Bond shall be given by the surety to secure the full and faithful performance of the Contract. The Performance Bond shall be for 100% on the amount of the awarded Contract (Contract Sum).

7.1.4 PAYMENT BOND. The Payment Bond shall be given by the surety to secure the payment for services performed, materials supplied, and equipment furnished to its principal and any subcontractors in the prosecution of the Work. The Payment Bond shall be for 100% of the amount of the awarded Contract (Contract Sum).

7.1.5 COMBINATION PERFORMANCE and PAYMENT BOND. The surety may offer a combined Performance and Payment Bond for the Owner’s consideration. In that event, the combination-Bond shall be for 200% of the amount of the awarded Contract (Contract Sum).

7.1.6 MAINTENANCE BOND. The Maintenance Bond shall be given by the surety to guaranty against any and all defective material and workmanship that may be discovered in the completed Work. The Maintenance Bond shall be in the amount of 100% of the Contract Sum (as may have been adjusted by change orders), be for a term of one year from the date of Substantial Completion of the Work, and be delivered to the Owner with the Contractor’s executed Certificate of Substantial Completion.

7.2.3 REPLACE the words “on or after” with “on or before”.

ARTICLE 8

FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

REPLACE ARTICLE 8:

The Owner’s standard Form of Agreement will be used for this proposed Contract. (see Exhibit E)
ADD seven Articles:

**ARTICLE 9**

**DISCLOSURE OF OWNERSHIP**

9.1 Corporate Bidders must disclose the name and address of each person who owns 10% or more of the Bidder’s corporation. Partnership Bidders must disclose the name and address of each person who has a 10% or greater interest in the Bidder’s partnership.

9.2 Each corporate or partnership Bidder must complete a “Statement of Ownership” (see Exhibit C). Their Statements of Ownership must accompany their Bids, or shall have been delivered to the Purchasing Agent not later than the time for the receipt of Bids.

9.3 The 10% disclosure requirement stated in 9.1 also must be applied to each corporation or partnership that is identified in the Bidder’s Statement of Ownership, with the process of disclosure being continued until no individual or entity so revealed represents a 10% or greater ownership of or interest in the Bidder’s corporation or partnership.

9.4 Any corporate or partnership Bidder who fails to fully comply with these disclosure requirements will not be awarded the Contract; their Bid will be null and void.

**ARTICLE 10**

**DESIGNATED SUBCONTRACTORS**

10.1.1 Bidders must disclose the names of their proposed Subcontractors for each class of Work required by N.J.S.A. 40A:11-16 and called out by the Bid Form. Subcontractors so identified and named on the Bid Form are herein collectively referred to as “Designated Subcontractors.”

10.1.2 Each Designated Subcontractor’s Subbid price must be entered by the Bidder where provided for in the Bid Form. The apparent low bidder must provide a certified true copy of each Designated Subcontractor’s written bid proposal within five days of the Owner’s request. The Contractor must provide a certified true copy of each Designated Subcontractor’s executed subcontract within five days of the Contractor’s receipt of the Owner’s fully executed Contract.

10.1.3 The Owner’s payments to Designated Subcontractors will be made according to Law and the General Conditions of the Contract as supplemented.

10.1.4 The Contractor shall not be permitted to substitute other subcontractors for the Designated Subcontractors who are identified and named on its Bid Form.

10.1.5 The Bidder may name itself as the Designated Subcontractor for any of the Work that it is qualified to perform.

10.1.6 Subcontractor must be registered as per the Public Works Contractor Registration Act P.L. 1999 c.238 c.34:56 et seq. at the time the bid is made. No Subcontractor, including a subcontractor not listed in the bid proposal, shall engage in the performance of any public work subject to the contract, unless the subcontractor is registered pursuant to that act.
10.2 OTHER SUBCONTRACTORS

10.2.1 The successful Bidder will be required to disclose the names of its other principal subcontractors and suppliers in accordance with Paragraph 6.3.

ARTICLE 11
OTHER STATUTORY REQUIREMENTS

11.1 PREVAILING WAGE ACT

11.1.1 The Contractor and all Subcontractors will be required to comply with the requirements of Chapter 150 of New Jersey Laws of 1963, known as the “New Jersey Prevailing Wage Act.”

11.1.2 Bidders, by submitting their Bids, pursuant to N.J.S.A. 34:11-56.38 (regarding the State of New Jersey list of debarred contractors and subcontractors), attest that neither they, their company, nor any of their proposed Subcontractors are prohibited from being awarded their Contracts for the Work for failure to pay Prevailing Wages.

11.1.3 Regulations of the New Jersey Department of Labor (N.J.A.C. 12:60-1) require the Contractor and its subcontractors to submit certified payroll records to the Owner within ten days of the payment of wages. A copy of the certified payroll form for submission of payroll records may be obtained by contacting the New Jersey Department of Labor, Division of Workplace Standards PHONE: 609-292-2283.

11.2 AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY

11.2.1 The Contractor will be required to comply with Chapter 127 of New Jersey Laws of 1975 (effective July 10, 1978) and N.J.A.C. 17:27, known as the “Affirmative Action Regulation of the State of New Jersey.”

11.2.2 The Contractor will be required to submit an Initial Project Manning Report within three days of signing the Agreement.

11.2.3 The “Mandatory Affirmative Action Language” for construction contracts and EEO/Affirmative Action Compliance Notice Checklist will be part of the Contract (see Rider A to Owner’s standard Form of Agreement at Exhibit E).

11.2.4 Monthly Project Work Force Reports must be filed by the Contractor with the New Jersey Affirmative Action Office, with copies to the Owner’s Public Agency Compliance Officer at the office of the Purchasing Agent.

11.3 COPELAND (ANTI-KICKBACK) ACT

11.3.1 Bidders are required to comply with all applicable regulations of the Secretary of Labor, U. S. Department of Labor, pursuant to the “Anti-Kickback Act” of June 13, 1934 (48 Stat. 863: Title 18 U.S.C., Sec. 874, and Title 40 U.S.C., Sec. 276c), and any amendments or modifications thereof. The Successful Bidder shall cause appropriate provisions to be inserted in its subcontracts to insure compliance therewith by all of its Subcontractors.
11.4  U.S. PRODUCTS REQUIRED

11.4.1  Bidders must fully account for the requirements of N.J.S.A. 40A:11-18 that call for the use and incorporation in the Work of only manufactured and farm products of the United States of America, wherever they are available. The Contract Sum will not be increased for any reasons that stem from the Contractor’s failure or neglect to reflect this requirement in its Bid Proposal and the Contract Sum.

11.6  FOREIGN (OUT-OF-STATE) CORPORATIONS

11.6.1  A “foreign corporation” is one that is not organized under New Jersey Laws, or otherwise is not authorized to conduct business in New Jersey. The Owner’s award of the Contract to a “foreign corporation” will be conditioned on such Successful Bidder’s prompt filing with the N.J. Department of State for authorization to conduct business in New Jersey.

11.6.2  The final award of the Contract cannot take place until the Bidder provides a certified copy of the State’s written authorization to conduct business in New Jersey, together with a copy of its application the New Jersey Department of State.

11.7  STATE SALES TAXES AND FEDERAL EXCISE TAXES

11.7.1  Bids must fully account for the costs imposed by all applicable New Jersey Sales Tax and Federal Excise Tax laws. Bidders must make their own determinations of the current status and applicability of all tax laws.

11.7.2  The Owner is exempt from paying New Jersey Sales Taxes. In general: Materials, supplies, and services that are used exclusively to alter, construct, improve or repair County-owned property are exempted under the New Jersey Sales Tax Act. However, the Contractor’s purchases, leases or rentals of equipment used to prosecute the Work are not exempt from New Jersey’s Sales Taxes.

11.7.3  The Contractor shall not have any right to make any claims or to take any other actions against the Owner for reasons that stem from the Contractor’s misunderstanding of the applicability of any tax laws.

11.8  CONSENT OF SURETY

11.8.1  N.J.S.A. 40A:11-22 requires that Bids must be accompanied by a Consent of Surety. The Consent of Surety shall provide that, if the Contract is awarded to its principal, the surety on behalf of its principal will post the required Performance Payment Bonds. The apparent lowest responsible Bidder, prior to receiving the Owner’s award of the Contract, also will be required to submit a Consent of Surety for the one-year Maintenance Bond that is described in Article 7 of these Supplementary Instructions To Bidders.

11.8.2  The Consent of Surety must be in a form that is substantially similar to the Owner’s “Model Consent of Surety” (see Exhibit D), and shall be given by a surety that is licensed to conduct business and authorized to post such bonds in the State of New Jersey.

11.8.3  A Surety Disclosure Statement and Certification in the form required by N.J.S.A. 2A:44-143 shall accompany the consent of surety at the time of the bid. The County may, however, in its discretion, allow submission of the security disclosure statement and certification after receipt of bids. Performance and payment bonds cannot be accepted by the
County unless a surety disclosure statement and certification complying with N.J.S.A. 2A:44-143 has been provided.

11.9 **AMERICANS WITH DISABILITIES ACT**

11.9.1 The Contractor shall comply with the provisions and requirements of the Americans With Disabilities Act, Equal Opportunity for Individuals With Disabilities, a copy of which is found at Rider B in the Bid Documents.

11.10 **CONTRACTOR’S REGISTRATION ACT**

11.10.1 Public Works Contractor Registration Act: The Public Works Contractor Registration Act (P.L.1999, c238 as amended by P.L. 2003, c91) states no contractor shall bid on any contract for public work as defined in section 2 of P.L. 1963, c.150 (c.34:11-56.26), unless the contractor is registered pursuant to this act. No contractor shall list a designed subcontractor in a bid proposal for the contract unless the designed subcontractor is registered pursuant to P.L. 1999, c.238 (c.34:11-56.48 et seq.) at the time the bid is made. No subcontractor not listed in the bid proposal, shall engage in the performance of any public work subject to the contract, unless the contractor is registered pursuant to act.

11.11 **NEW JERSEY BUSINESS REGISTRATION**

**GOODS, SERVICES, AND CONSTRUCTION* CONTRACTS**

Proof of valid business registration (a Business Registration Certificate) with the New Jersey Department of Treasury, Division of Revenue must be submitted to the contracting agency prior to the award of any contract, including purchase orders. No contract will be awarded without proof of such business registration. N.J.S.A. 52:32-44 imposes the following requirements on contractors and on all subcontractors that knowingly enter into a contract, or construct a construction project, with a contractor in the fulfillment of a contract with a contracting agency. *In the case of a construction contract, “subcontractor” shall mean only designated subcontractors who are required by N.J.S.A. 40A:11-16 to be named in the submission of a bid.

A subcontractor named in a bid or other proposal made by a contractor to a contracting agency shall provide a copy of its business registration to the contractor who shall provide it to the contracting agency. The contractor shall provide the contracting agency with the business registration of the contractor and that of any named subcontractors prior to the time a contract is awarded.

The contractor shall maintain and submit to the contracting agency a list of subcontractors and their addresses that may be updated from time to time during the course of the contract performance. Before final payment of the contract is made by the contracting agency, the contractor shall submit a complete and accurate list and proof of business registration of each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used.
For the term of the contract, the contractor and each of its affiliates and each subcontractor and each of its affiliates (N.J.S.A. 52:32-44 (g) (3)) shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the “Sales and Use Tax Act” (N.J.S.A. 54:32 B-1, et seq.) on all taxable sales of tangible personal property delivered into this state.

A business organization that fails to provide proof of business registration or provides false business registration information shall be liable to a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration not properly provided or maintained under a contract with a contracting agency.

Sample Business Registration Certificates are attached for convenience. Questions on obtaining a Business Registration Certificate or on the law and its requirements can be directed to the Division of Revenue at (609) 292-9292.

11.12 MAINTENANCE OF RECORDS
DOCUMENTATION RELATED TO PRODUCTS, TRANSACTIONS, AND OR SERVICES.
In accordance with N.J.A.C., 17:44-2.2; Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

ARTICLE 12
UNIT PRICE BID ITEMS

12.1 BID PRICES
12.1.1 The Bid Form for this proposed Contract calls for unit price bids for certain elements of the Work. Bidders shall enter their unit price bids on the blank line immediately adjacent to the corresponding unit printed on the Bid Form.
12.1.2 When the Bidder intends to bid zero ($0.00) for a unit price bid item, a “0” shall be entered on the “unit price” and “extended price” blank lines.

12.2 ALL COSTS AND MARK-UPS TO BE INCLUDED
12.2.1 The Bidder shall prepare its Bid so that it reflects the Bidder’s anticipated actual cost of each of the unit price bid items, together with a proportional share of the Bidder’s anticipated profit, overhead and other costs directly related to each such bid item.
12.2.2 The Owner will not consider any claim for additional compensation arising from the amount bid on a unit price bid item (or items) that inaccurately reflects the cost of such work or that contains a disproportionate share of the Bidder’s anticipated profit, overhead and other costs. The Contractor expressly waives the right to pursue such claims under the terms of the General Conditions of the Contract (as supplemented).
12.3 DISCREPANCIES

12.3.1 The Bidder’s “unit price” shall prevail if there is a discrepancy between an “extended price” and its “unit price.” The Owner shall have the right to re-compute the “extended price” and to check the addition of all prices entered on any Bid Form. (see related subject matter at subparagraph 5.3.6)

12.4 BASIS FOR PAYMENTS

12.4.1 The “quantity” shown on the Bid Form for each unit price bid item is the Owner’s take-off from the Bidding Documents. The actual quantity of Work performed may vary from that shown on the Bid Form.

12.4.2 The basis for the Owner’s progress payments to the Contractor will be computed by multiplying the unit price times the net quantity of newly completed Work performed by the Contractor.

12.4.3 The Owner shall have the right to independently measure the unit-price-work-in-place. Any costs that may be incurred to obtain those measurements will be borne by the Owner.

12.4.4 The Contract Sum shall be adjusted by appropriate Change Order to fully account for the verified quantity of unit-price-work that has been performed by the Contractor.

ARTICLE 13
PRE-BID MEETING

13.1 PURPOSE

13.1.1 The principal purpose of the Pre-Bid Conference will be to afford Bidders a timely opportunity to examine the Project site and interior of any building that is included in the scope of the Work.

13.2 ATTENDANCE BY BIDDERS

13.2.1 The Pre-Bid Meeting is not mandatory, but strongly encouraged

13.2.3 Mere attendance of the Pre-Bid Meeting shall not be later held as having fully satisfied the Contractor’s obligations to investigate all aspects of the Project conditions and the Bidding Documents.

13.2.4 Bidders are encouraged to have their prospective Subcontractors (and others) attend the Pre-Bid Meeting.

13.2.5 Each Bidder should have at least one set of the Bidding Documents at the Pre-Bid Meeting for reference.

13.3 FORMAT OF PRE-BID MEETING

13.3.1 The Pre-Bid Meeting will be conducted by a representative of the Owner (“Owner’s Rep”). The Owner’s Rep will conduct a guided tour of the Work site to orient Bidders to the overall aspects of the Project. The
Bidders then will be allowed reasonable time to independently investigate the existing conditions at the Project site.

13.3.2 Questions raised by Bidders at the Pre-Bid Conference concerning interpretations of the Bidding Documents or the substance of the Work must be in writing.

13.3.2.1 The Owner’s Rep will scan all written questions as they are received, and, where warranted, may ask Bidders to clarify their questions.

13.3.2.2 The Owner’s Rep will not answer any Bidder’s questions except those that can be simply responded to by making direct reference to the Bidding Documents. A Bidder who thinks that the Owner’s Rep has made improper statements concerning the Bidding Documents or the substance of the Work must report the factual basis for their contentions in writing to the Purchasing Agent as soon as possible.

13.3.2.3 The Owner’s Rep will promptly deliver all written questions received at the Pre-Bid Conference to the Purchasing Agent (and others as may be appropriate) for review and evaluation of the possible need for issuing Addenda. “Promptly” means not later than the close of business on the next County business day.

13.3.3 The Pre-Bid Meeting will remain in session for as long as there is active interest expressed by any Bidder, but not later than 5:30 P.M. prevailing time. Bidders may leave at any earlier time of their choosing upon completion of the guided tour and the Bidder’s completion of its independent investigations of the existing

ARTICLE 14
ALLOWANCES

14.1 ALLOWANCES TO BE INCLUDED IN BIDS

14.1.1 The Allowances for this Project are fully described in the Project Specifications. The Project Specifications also define what elements of cost are included in the specified dollar amount for each scheduled Allowance.

14.1.2 Bidders must include the specified dollar Allowance(s) in their Bid Price where shown and as printed on the Bid Form. A Bidder who modifies or in any way qualifies the dollar Allowance(s) printed on the Bid Form risks rejection of its Bid.

14.1.3 The dollar Allowance(s) printed on the Bid Form do not include mark-ups for the Bidder’s overhead, profit, or any other incidental expenses. Those mark-ups are to be factored into the Bidder’s overall Base Bid Price.

14.2 RECONCILIATION OF ALLOWANCE COSTS

14.2.1 Any difference between the scheduled dollar Allowance(s) and the actual cost will be reconciled by Change Order. The Project Specifications establishes how the actual costs of Allowance items are to be determined.
ARTICLE 15
CONDITIONS PRECEDENT TO OWNER’S EXECUTION OF AGREEMENT; BID GUARANTEE MAY BE FORFEITED

15.1  BIDDER MUST EXECUTE AGREEMENT

15.1.1  The Owner will prepare and deliver a proposed Agreement to the Successful Bidder for its signature. The Owner’s proposed Agreement will be substantially similar to the Owner’s standard Form of Agreement (see Exhibit E), and will be conformed to reflect and incorporate the awarded Contract.

15.1.2  The Successful Bidder must promptly review and sign the Owner’s proposed Agreement, and return it to the Owner within 7 days of the Bidder’s receipt of written notice that it was awarded the Contract. (see also Paragraphs 15.6 and 15.7)

15.2  REQUIRED BONDS MUST BE POSTED AND ACCEPTED

15.2.1  The Successful Bidder must deliver the required Performance and Payment Bonds (see Article 7) to the Owner within 21 business days of the Bidder’s receipt of written notice that it was awarded the Contract. (see also Paragraphs 15.6 and 15.7)

15.2.2  The Owner will return to the Bidder any bond(s) that are not drawn in accordance with the requirements of N.J.S.A. 2A:44-143 et seq, or that otherwise are found to be of a form that is not acceptable to the Owner. In that event, the Bidder, as soon thereafter as is possible, must redeliver the proper bond(s) to the Owner for its further review as above.

15.3  INSURABILITY OF BIDDER TO BE CERTIFIED

15.3.1  The Successful Bidder must deliver all required certificates of insurance (see related subject matter in the General Condition of the Contract as supplemented), together with such other proofs of insurance that may be appropriate, to the Owner within 7 business days after the Bidder’s receipt of written notice that it was awarded the Contract. The certificates of insurance must be delivered to the Owner before the Contractor mobilizes on site, performs any Work, or performs any demolition.

15.3.2  The Owner will carefully review the Bidder’s proofs of insurance for compliance with the requirements of Law and the proposed Contract. The Bidder must promptly overcome any deficiencies or errors uncovered by the Owner’s review, and deliver the correct proofs of insurance to the Owner as soon as possible.

15.4  AFFIRMATIVE ACTION REQUIREMENTS TO BE MET BY BIDDER

15.4.1  The Successful Bidder must file its Initial Project Manning Report with the New Jersey Affirmative Action Office no later than three days after signing the Agreement. A copy of the report must at the same time be filed with the Monmouth County Park System’s Public Agency Compliance Officer at the Department of Purchasing. (see Rider A to Form of Agreement and explanation following the law)
15.5 FOREIGN CORPORATION MUST BE CERTIFIED (IF APPLICABLE)

15.5.1 The Owner must have proof that a certificate of authority from the New Jersey Department of State has been issued to any Foreign Corporation who receives the Owner’s conditional award of the Contract. (see Paragraph 11.7)

15.6 TIME LIMITS MAY BE ADJUSTED

15.6.1 The Owner and the Successful Bidder may agree to reasonable extensions of the above stated 7 day time limits.

15.6.2 The Owner may in particular cases extend to no more than 14 days the 3-day time limit specified in Paragraph 15.4 (Initial Project Manning Report).

15.6.3 The Owner shall not be obligated to extend any of the time limits so specified or provided by Law when, in its sole judgment, to do so would not serve its best interests.

15.7 BIDDER MAY FORFEIT BID GUARANTEE

15.7.1 The Bid Guarantee that has been posted by the Successful Bidder may be forfeited and be retained by the Owner as liquidated damages (not a penalty) if the Bidder fails to fully satisfy the requirements of this Article 15.

ARTICLE 16
PROJECT LABOR AGREEMENT

16.1 The successful Bidder will be required to execute a Project Labor Agreement in substantially the same form as that adopted by the Board of Recreation Commissioners. Prior to the commencement of any work on the project, the successful Bidder will be required to contact the Monmouth & Ocean Counties Building & Construction Trades Council in order to set up a mandatory pre-construction meeting, where the Project Labor Agreement will be executed. A fully executed copy of the Project Labor Agreement, including a signed Letter of Assent from each subcontractor, shall be forwarded to the County by the successful Bidder.

Monmouth & Ocean Counties Buildings & Construction Trades Council
Contact information:
President: Thomas De Bartolo
Office: (732) 919-1999
Fax: (732) 938-7901
Email: tdsml27@aol.com

END OF SUPPLEMENTARY INSTRUCTIONS TO BIDDERS
BID DOCUMENT CHECKLIST
BID #0076-20

Items required with bid (Owner’s checkmarks) Items submitted with bid (Bidder’s INITIALS)

A. FAILURE TO SUBMIT ANY OF THESE ITEMS WITH BID IS MANDATORY CAUSE FOR REJECTION

 X Bid Proposal (Original)
 X Bid guarantee (Bid Bond or Certified/Cashier’s Check)
 X Certificate from a Surety Company (Consent of Surety)
 X Statement of Ownership
 X Acknowledgment of receipt of addenda
 X List of designated subcontractors (if applicable)
 X Non-Collusion Affidavit
 X Disclosure of Energy Sector Investment Activities in Iran
 X General Contractors Qualifications & References (GCQ&R-1)
 X Contractor’s Qualification Statement (AIA A 305)

B. ITEMS PREFERRED WITH THE BID, BUT MANDATORY PRIOR TO AWARD OF CONTRACT

 X Copy of Public Works Contractor Registration Act Certificate for the bidder and the designated subcontractors, effective on the date of bid – prior to award of contract

 X Copy of the New Jersey Business Registration Certificate or other acceptable proof of Business Registration for the bidder and the designated subcontractors – prior to award of contract

 X EEO/Affirmative Action Compliance Notice Checklist

THE UNDERSIGNED BIDDER HEREWITH SUBMITS THE ABOVE REQUIRED DOCUMENTS.

PRINT OFFICIAL COMPANY NAME: ________________________________

SIGNED BY: ______________________________________________________

PRINT NAME AND TITLE: __________________________________________

DATE: __________________________

THIS CHECKLIST SHOULD BE INITIALED AND SIGNED WHERE INDICATED AND RETURNED WITH ALL DOCUMENTS
NON-COLLUSION AFFIDAVIT

(N.J.S.A. 52:34-15)

STATE OF ______________  )

§:

COUNTY OF ____________  )

Re: RECONSTRUCTION OF HOMINY HILL GOLF CENTER

I, _____________________________________________ (name) of full age, being duly sworn according to law, on my oath depose and say:

I am the _______________________________________ (title)
of _________________________________ (name of bidder), the bidder for the above named project, and that I executed the said bid with full authority so to do; that the bidder has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in the bid and in this affidavit are true and correct, and made with full knowledge that the County of Monmouth relies upon the truth of the statements contained in the bid and in the statements contained in this affidavit in awarding a contract for the project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by my firm for the purpose of securing business.

Signed: X______________________________

Subscribed and sworn to before me this _____ day of ____________, 20__.  

_________________________________

Notary Public of

My commission expires ____________, 20__.  

Revised 9/2015
CAUTION

REGARDING STATEMENT OF OWNERSHIP

The enclosed Statement of Ownership form must be properly completed. If it is not properly completed, your bid must be rejected, as required by N.J.S.A. 40A:11-23.2. Mistakes cannot be cured after bids are received.

For example, if your firm, bidder “A”, is entirely owned by corporation “B”, you must disclose the names and addresses of the owners of 10% or more of corporation “B”. Furthermore, if corporation “C” owns 10% or more of corporation “B”, you must disclose the names and addresses of the owners of 10% or more of corporation “C”, and so on, until the names and addresses of all persons, i.e., human beings, in this “10%” chain of ownership have been disclosed.

The same procedure applies if any 10% or more owner is a partnership, limited liability company, estate or any other type of legal entity, as opposed to a corporation.
STATEMENT OF OWNERSHIP  EXHIBIT C
(N.J.S.A. 52:25-24.2)

The CONTRACTOR is (check one):

☐ Partnership  ☐ Corporation  ☐ Sole Proprietorship  ☐ Limited Liability Partnership
☐ Limited Liability Corporation  ☐ Limited Partnership
☐ Subchapter S Corporation  ☐ Other, Please List_____________________________

I certify that:

☐ No individual person or entity owns a 10% or greater interest in the Contractor.

OR

☐ The list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the Contractor. However if a parent entity holding 10% or more is a publicly traded entity, then the Contractor in complying with N.J.S.A. 52:25-24.2 may submit the name and address of each publicly traded entity, and the name and address of each person holding 10% or more beneficial interest in the publicly traded entity as of the last annual filing with the Security Exchange Commission (SEC), or foreign equivalent.

Name: _______________________________ Address: _______________________________
Name: _______________________________ Address: _______________________________
Name: _______________________________ Address: _______________________________

☐ Check here if additional sheets are attached.

NOTE: If an entity owns a 10% or greater interest in the Contractor, list all owners of 10% or greater interest for each such entity. Repeat the process of disclosure as necessary for each tier or level of ownership until the name and address of each individual person who owns a 10% or greater interest in each listed entity has been disclosed.

Publicly Traded Parent Company Disclosure:
Provide the Website (URL) providing the last annual Security Exchange Commission (SEC) filing, or foreign equivalent:
_____________________________________________________________________________________

The requested information is available on the following page number(s) of the SEC, or foreign equivalent, filing:
______________________________________________________________________

CONTRACTOR_________________________________
SIGNED BY: X_________________________________  
PRINT NAME & TITLE:______________________________
DATE:__________________________________________

(Corporate seal if a corporation)
Revised 3/2017
The Consent of Surety that is to be submitted with the Bid must be prepared, signed and issued by the Bidder's bonding company or other authorized surety. Two sample wordings for the required Consent of Surety which are acceptable to the Owner appear below.

---------------------------------------------------------------------------------

It is understood and agreed that *(insert name of surety)* will become surety on the bond of *(insert name of Bidder)*, the principal, for the Contract for the *(insert title of Bid)* if the principal is the successful Bidder. If the Contract is awarded to the principal *(insert name of surety)* will issue a Performance Bond and a Labor and Material Payment Bond, each of which shall be for 100% of the amount of the awarded Contract, or a combined Performance and Labor Material Payment Bond in the amount of 200% of the awarded Contract Sum, and will issue a Maintenance Bond for 100% of the Final Contract amount, as amended during construction, upon substantial completion of the Work, all as more fully specified by the Bidding Documents.

---------------------------------------------------------------------------------

It is understood and agreed that *(insert name of surety)* will become surety on the bond of *(insert name of Bidder)*, the principal, for the Contract for the *(insert title of Bid)* if the principal is the successful Bidder. If the Contract is awarded to the principal *(insert name of surety)* will issue all bonds that are required by the Bidding Documents.

---------------------------------------------------------------------------------

**NOTE:** A Surety Disclosure Statement and Certification may be required. See subparagraph 11.8.3 of the Supplementary Instructions to Bidders.
BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, as Principal, and as Surety, is hereby held and firmly bound unto as Owner, in the Penal Sum of ($) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed this day of 20____.

The condition of the above obligation is such that whereas the Principal has submitted to a certain bid, attached hereto and hereby made a part of hereof, to enter into a contract in writing.

NOW THEREFORE,

A) If said bid shall be rejected or in the alternative.

B) If said bid shall be accepted and the Principal shall execute and deliver a contract in the form of contract attached hereto (properly completed in accordance with said bid) and shall furnish a bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in the connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid.

Then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

___________________________________________
Principal

By: _________________________________________
Witness

___________________________________________
Witness

___________________________________________
Surety BY:  
Attorney-in-Fact
PERFORMANCE BOND

Bond No. ______________

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____________________ ________________________________ as PRINCIPAL and ________________________________ with underwriting office at __________________________________________, to which all communication in regard to this bond should be addressed, a corporation organized and existing under the laws of the State of ______________ and duly authorized to do business in the State of New Jersey, as SURETY, are hereby held and firmly bound unto the State of New Jersey in the penal sum of ________________________________________________, for payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

SIGNED and SEALED this _______ day of _________________ two thousand and ______.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, WHEREAS, the above named Principal has been awarded a contract identified as:

________________________________________________________________________________________
________________________________________________________________________________________
which said contract, upon execution by the Monmouth County Park System, and the Principal, will be a part of this bond the same as though set forth herein.

Now, if the said Principal shall well and faithfully do and perform each and every, all and singular, the things agreed by it (or them) to be done and performed according to the terms of said contract, then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said Surety hereby stipulated and agrees that no modifications, omissions or additions in or to the terms of the said contract, or in or to the plans or specifications therefore, shall in any way affect the obligations of said Surety on its bond.

Principal: Affix
By: Corporate
Seal

Surety: Affix
By: Corporate
Seal

Witness

Printed or Typed Name

Witness

Printed or Typed Name
PAYMENT BOND

Bond No. ____________

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned________________________
as PRINCIPAL and ____________________________
with underwriting office at ____________________________
to which all communication in regard to this bond should be addressed, a corporation organized and existing
under the laws of the State of __________________________ and duly authorized to do business in the State of New Jersey, as SURETY, are hereby held and firmly bound unto the State of New Jersey in the penal sum of ____________________________

for payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs,
executors, administrators, successors, and assigns.

SIGNED and SEALED this ________ day of ___________, two thousand and _____________.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, WHEREAS, the above named Principal
has been awarded a contract identified as:

________________________________________________________________________________________
_______________________________________________________________________________________
___________________________________________________________________________
which said contract, upon execution by the Monmouth County Park System, and the Principal, will be a part of
this bond the same as though set forth herein.

Now, if the said Principal shall pay all lawful claims of beneficiaries as defined by N.J.S.2A:44-143 for
labor performed or materials, provisions, provender or other supplies or teams, fuels, oils, implement or
machinery furnished, used or consumed in carrying forward, performing or completing of said contract, we
agreeing and assenting that this undertaking shall be for the benefit of any beneficiary as defined in
N.J.S.2A:44-143 having a just claim, as well as for the party of the first part mentioned in the contract aforesaid;
then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly
understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed
the penal amount of this obligation as herein stated.

The said Surety hereby stipulated and agrees that no modifications, omissions or additions in or to the
terms of the said contract, or in or to the plans or specifications therefore, shall in anyway affect the obligations
of said Surety on its bond.

Principal:

By: __________________________
Name: __________________________
Title: __________________________

Witness

Printed or Typed Name

Surety:

By: __________________________
Name: __________________________
Title: __________________________

Witness

Printed or Typed Name
THIS AGREEMENT entered into this day of 20____:

BY AND BETWEEN THE MONMOUTH COUNTY BOARD OF RECREATION COMMISSIONERS, a body politic, with offices located at the 805 Newman Springs Road, Lincroft, New Jersey 07738, hereinafter referred to as “Board,”

AND [...]CONTRACTOR [...] a [...]state [...] corporation/partnership [...], with offices at [...]legal physical address [...], hereinafter referred to as “Contractor.”

IT IS AGREED:

1. Contractor will construct [...]Project identification will be inserted here]... for the TOTAL SUM OF [...]Contract Sum will be inserted here in words and numerals]... DOLLARS, all in accordance with the notice to bidders, plans, specifications and proposal, resolution awarding contract, and other bid documents, all of which are incorporated herein and made a part hereof as if set forth in full.

2. Contractor will indemnify and save harmless the County of Monmouth, Board of Recreation Commissioners, its officers, servants and agents for and from all damages, claims, suits and costs, including counsel fees, to which they may be put by reason of (a) injury to persons or property due to the actual or alleged carelessness or negligence of the Contractor, its servants or agents, or (b) the Contractor’s actual or alleged failure to pay its workers, suppliers or subcontractors for labor or materials provided to the County.

3. Contractor will not assign this contract in whole or part to another person or entity without the Board’s written consent. This paragraph is not intended to constrain the Contractor’s ability to enter customary subcontracts for performing various portions of the Work at the site, and for furnishing equipment and materials to be incorporated in the Work, subject however to the Contractor’s obligation to engage the designated subcontractors named in its proposal.

4. Should Board during the progress of work require any alterations, deviations, additions or omissions from said specifications at any time thereof, it shall be at liberty to do so and the same shall in no way be deemed to be a breach or void of this contract but the value of such work or material involved in such change shall be added to or deducted from the amount of the contract as the case may be at the rate herein specified or, if not herein specified, then by fair, just and reasonable valuation.

5. During the performance of this contract, the Contractor will comply with the requirements of P.L. 1975, C. 127 (N.J.A.C. 17:27), “Mandatory Affirmative Action Language for Construction Contracts” which is made a part of this Agreement (see Rider A to this Agreement).

6. The Contractor will comply with the New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq) and the regulations issued thereunder (N.J.A.C. 12:60-1.4 et seq). The Contractor agrees to pay its workers no less than the prevailing wage rate as set forth in Rider B attached hereto. In the event it is found that any worker employed by the Contractor or any subcontractor covered by this Agreement has been paid a rate of wages less than required to be paid, the Board may terminate the Contractor’s or subcontractor’s right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages, and to prosecute the work to completion or otherwise. The Contractor and its sureties shall be liable to the Board for any excess costs.
occasioned thereby. The Contractor and its subcontractors will post the prevailing wage rates in prominent and easily accessible places at the site of the work or at such place or places as are used then to pay workers their wages. The Contractor represents that it is not debarred from public works pursuant to N.J.S.A. 34:11-56.37; furthermore the Contractor agrees not to engage the services of any contractors or subcontractors for this project who are listed on the list of debarred contractors and subcontractors contained in Rider B. Before final payment is made to the Contractor, the Contractor and its subcontractors will file written certification as to any unpaid wages, pursuant to N.J.S.A. 34:11-56.33.

IN WITNESS WHEREOF, the parties have signed this agreement.

ATTEST:

________________________________
JAMES J. TRUNCER
Secretary/Director

MONMOUTH COUNTY BOARD OF
RECREATION COMMISSIONERS

By: ____________________________
KEVIN MANDEVILLE
Chairman

ATTEST:

[Corporate Seal]

[CONTRACTOR]

By: ____________________________
[Name and title of person signing]
EXHIBIT A

MANDATORY ANTI-DISCRIMINATION IN EMPLOYMENT LANGUAGE
N.J.S.A. 10:2-1

CONSTRUCTION, ALTERATION OR REPAIR OF ANY PUBLIC BUILDING OR PUBLIC WORK OR FOR THE ACQUISITION OF MATERIALS, EQUIPMENT, SUPPLIES OR SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates.

No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex.

There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of $50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract.

This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

No provision in this section shall be construed to prevent a board of education from designating that a contract, subcontract or other means of procurement of goods, services, equipment or construction shall be awarded to a small business enterprise, minority business enterprise or a women’s business enterprise pursuant to P.L. 1985, c. 490 (C.18A:18A-51 et seq.).

(Revised 2/2017)
EXHIBIT B
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)
N.J.A.C. 17:27-1.1 et seq.

CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers’ representative of the contractor’s commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:
(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

1. To notify the Public Agency Compliance Officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Dept. of LWD, Construction EEO Monitoring Program pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

2. To notify any minority and women workers who have been listed with it as awaiting available vacancies;

3. Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

4. To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

5. If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

6. To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
(i) The contractor or subcontractor shall interview the referred minority or woman worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and nondiscrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the Public Agency Compliance Officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract the contractor shall submit to the Public Agency Compliance Officer and the Dept. of LWD, Construction EEO Monitoring Program an Initial Project Workforce Report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and
completion by the contractor, in accordance with *N.J.A.C. 17:27-7*. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the Public Agency Compliance Officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to *N.J.A.C. 17:27-1.1 et seq.*

(Revised 2/2017)
Supplementary Instructions To Bidders

EXHIBIT C

AMERICANS WITH DISABILITIES ACT OF 1990
Equal Opportunity for Individuals with Disability

The contractor and the County of Monmouth, (hereafter “owner”) do hereby agree that the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the “Act”) (42 U.S.C. §12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner’s grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the owner shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor’s obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

(Revised 2/2017)
EEO/AFFIRMATIVE ACTION COMPLIANCE NOTICE
N.J.S.A. 10:5-31 and N.J.A.C. 17:27
GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

All successful bidders are required to submit evidence of appropriate affirmative action compliance to the County and Division of Public Contracts Equal Employment Opportunity Compliance. During a review, Division representatives will review the County files to determine whether the affirmative action evidence has been submitted by the vendor/contractor. Specifically, each vendor/contractor shall submit to the Commission, prior to execution of the contract, one of the following documents:

Goods and General Service Vendors
1. Letter of Federal Approval indicating that the vendor is under an existing Federally approved or sanctioned affirmative action program. A copy of the approval letter is to be provided by the vendor to the Commission and the Division. This approval letter is valid for one year from the date of issuance.

Do you have a federally-approved or sanctioned EEO/AA program? Yes ☐ No ☐
If yes, please submit a photostatic copy of such approval.

2. A Certificate of Employee Information Report (hereafter “Certificate”), issued in accordance with N.J.A.C. 17:27-1.1 et seq. The vendor must provide a copy of the Certificate to the Commission as evidence of its compliance with the regulations. The Certificate represents the review and approval of the vendor’s Employee Information Report, Form AA-302 by the Division. The period of validity of the Certificate is indicated on its face. Certificates must be renewed prior to their expiration date in order to remain valid.

Do you have a State Certificate of Employee Information Report Approval? Yes ☐ No ☐
If yes, please submit a photostatic copy of such approval.

3. The successful vendor shall complete an Initial Employee Report, Form AA-302 and submit it to the Division with a $150.00 Fee and forward a copy of the Form to the Commission. Upon submission and review by the Division, this report shall constitute evidence of compliance with the regulations. Prior to execution of the contract, the EEO/AA evidence must be submitted.

The successful vendor may obtain the Affirmative Action Employee Information Report (AA302) on the Division website www.state.nj.us/treasury/contract_compliance.

The successful vendor(s) must submit the AA302 Report to the Division of Public Contracts Equal Employment Opportunity Compliance, with a copy to Public Agency.

The undersigned vendor certifies that he/she is aware of the commitment to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27 and agrees to furnish the required forms of evidence.

The undersigned vendor further understands that his/her bid shall be rejected as non-responsive if said contractor fails to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27.

COMPANY: ___________________________ SIGNATURE: ___________________________
PRINT NAME: ___________________________ TITLE: ___________________________
DATE: ___________________________
COUNTY OF MONMOUTH, STATE OF NEW JERSEY  
Division of Purchasing  
DISCLOSURE OF ENERGY SECTOR INVESTMENT ACTIVITIES IN IRAN  
New Jersey Public Law 2012, Chapter 25  

Solicitation Number: __________  Bidder / Respondent: ________________________________  

Project Description: ________________________________________________________________  

PART 1 – CERTIFICATION – CHECK THE APPROPRIATE BOX:  

A. ☐ I certify that neither the Bidder / Respondent nor any of the Bidder’s / Respondent’s parents, subsidiaries, or affiliates, as defined in C.52:32-56(e), is on the “Chapter 25 List” created and maintained by the New Jersey Department of the Treasury, as a person or entity engaging in the energy sector investment activities in Iran described in C.52:32-56(f). The Chapter 25 List may be found at http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf.  

OR  

B. ☐ The Bidder / Respondent and/or one or more of its parents, subsidiaries or affiliates is a person or entity on the Chapter 25 List referred to above. A detailed and precise description of the relevant activities of the listed Bidder / Respondent and/or listed parents, subsidiaries or affiliates is provided in Part 2 below.  

PART 2 – ADDITIONAL INFORMATION – COMPLETE PART 2 ONLY IF B. IN PART 1 IS CHECKED:  

The following is an accurate and precise description of the energy sector investment activities in Iran of the Bidder / Respondent and/or listed parents, subsidiaries or affiliates, on the Chapter 25 List (attach additional pages as necessary to make full disclosure):  

Name of Person(s) or Entity(ies) on the Chapter 25 List: ________________________________________________________________  

Relationship to Bidder / Respondent: ____________________________________________________________________________________________  

Description of Activities: ____________________________________________________________________________________________  

Duration of Engagement: ____________________________________ Anticipated Cessation Date: ______________________________  

Bidder / Respondent Contact Name: _____________________________ Contact Phone Number: ________________________________  

☐ Check here if additional pages are attached and state number of attached pages: ________ (Number of pages attached.)  

CERTIFICATION FOR PART 1 AND, IF APPLICABLE, PART 2: I, being of full age, hereby certify that the foregoing information and any attachments hereto are to the best of my knowledge true and complete. I certify that I am authorized to execute this certification on behalf of the Respondent. I acknowledge that the County of Monmouth will rely on the information contained herein and thereby acknowledge that I and the Bidder / Respondent are under a continuing obligation from the date of this certification through the completion of any contracts with the County to notify the County in writing of any changes to the answers or information contained herein.  

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment and the Bidder / Respondent is subject to the penalties stated in C. 52:32-59 and C. 40A:11-2.1.  

Full Name (Print) __________________________________________ Signature: ________________________________  

Title: ____________________________________________ Date: ________________________________
Current Prevailing Wage Rates and List of Debarred Contractors are available on-line at:

https://www.nj.gov/labor/wagehour/wagerate/wage_rates.html
https://www.nj.gov/labor/wagehour/wagerate/prevailing_wage_debarment_list.html

END OF EXHIBITS
Contractor's Qualification Statement

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO: Reconstruction of Hominy Hill Golf Center

ADDRESS: 92 Mercer Road, Colts Neck, NJ 07722

SUBMITTED BY:

NAME:

ADDRESS:

PRINCIPAL OFFICE:

[ ] Corporation
[ ] Partnership
[ ] Individual
[ ] Joint Venture
[ ] Other

NAME OF PROJECT: (if applicable) Reconstruction of Hominy Hill Golf Center

TYPE OF WORK: (file separate form for each Classification of Work)

[ ] General Construction
[ ] HVAC
[ ] Electrical
[ ] Plumbing
[ ] Other: (Specify)

§ 1 ORGANIZATION
§ 1.1 How many years has your organization been in business as a Contractor?

§ 1.2 How many years has your organization been in business under its present business name?

§ 1.2.1 Under what other or former names has your organization operated?

§ 1.3 If your organization is a corporation, answer the following:

§ 1.3.1 Date of incorporation:
§ 1.3.2 State of incorporation:
§ 1.3.3 President's name:
§ 1.3.4 Vice-president's name(s)

§ 1.3.5 Secretary's name:
§ 1.3.6 Treasurer's name:

§ 1.4 If your organization is a partnership, answer the following:
  § 1.4.1 Date of organization:
  § 1.4.2 Type of partnership (if applicable):
  § 1.4.3 Name(s) of general partner(s)

§ 1.5 If your organization is individually owned, answer the following:
  § 1.5.1 Date of organization:
  § 1.5.2 Name of owner:

§ 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

§ 2 LICENSING
  § 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

§ 2.2 List jurisdictions in which your organization's partnership or trade name is filed.

§ 3 EXPERIENCE
  § 3.1 List the categories of work that your organization normally performs with its own forces.

§ 3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)
  § 3.2.1 Has your organization ever failed to complete any work awarded to it?

  § 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

  § 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

§ 3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

§ 3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.
§ 3.4.1 State total worth of work in progress and under contract:

§ 3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.

§ 3.5.1 State average annual amount of construction work performed during the past five years:

§ 3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

§ 4 REFERENCES
§ 4.1 Trade References:

§ 4.2 Bank References:

§ 4.3 Surety:
   § 4.3.1 Name of bonding company:

   § 4.3.2 Name and address of agent:

(Paragraphs Deleted)

§ 6 SIGNATURE
§ 6.1 Dated at this day of

   Name of Organization:

   By:

   Title:

§ 6.2
M being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this day of

Notary Public:

My Commission Expires:
Additions and Deletions Report for
AIA® Document A305™ – 1986

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PAGE 1

SUBMITTED TO: Reconstruction of Hominy Hill Golf Center

ADDRESS: 92 Mercer Road, Colts Neck, NJ 07722

NAME OF PROJECT: (if applicable) Reconstruction of Hominy Hill Golf Center

PAGE 3

§ 5. FINANCING

§ 5.1 Financial Statement:

§ 5.1.1 Attach a financial statement, preferably audited, including your organization’s latest balance sheet and income statement showing the following items:

Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);

Net Fixed Assets;

Other Assets;

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User Notes:
Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes);
...
Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings);
...
§ 5.4.2 Name and address of firm preparing attached financial statement, and date thereof;
...
§ 5.4.3 Is the attached financial statement for the identical organization named on page one?
...
§ 5.4.4 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary);
...
§ 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?
Certification of Document's Authenticity
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(Signed)

(Title)

(Dated)
General Conditions of the Contract for Construction

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

Reconstruction of Hominy Hill Golf Center
92 Mercer Road, Colts Neck, NJ 07722

THE OWNER:
(Name, legal status and address)

Monmouth County Park System
805 Newman Springs Road, Lincroft, NJ 07738

HE ARCHITECT:
(Name, legal status and address)

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For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

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

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

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect’s consultants.

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

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

§ 1.7 Digital Data Use and Transmission
The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™—2013. Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.
§ 1.8 Building Information Models Use and Reliance
Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER
§ 2.1 General
§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

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

§ 2.2 Evidence of the Owner’s Financial Arrangements
§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

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

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

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

§ 2.3 Information and Services Required of the Owner
§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,
assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

§ 2.5 Owner’s Right to Carry Out the Work
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner’s expenses and compensation for the Architect’s additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents 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 2.3.4. shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor’s proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.4 Labor and Materials

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

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

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

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

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

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws
§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor 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.

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

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

§ 3.7.4 Concealed or Unknown Conditions
If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect’s determination or recommendation, that party may submit a Claim as provided in Article 15.
§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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

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

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

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

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

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

§ 3.10 Contractor’s Construction and Submittal Schedules
§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner’s and Architect’s information a Contractor’s construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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

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Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.11 Documents and Samples at the Site
The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.
§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect’s approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. The Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

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

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

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

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.
§ 3.16 Access to Work
The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

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

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

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

ARTICLE 4 ARCHITECT
§ 4.1 General
§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

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

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

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

§ 4.2.4 Communications
The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect’s services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect’s consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order 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 of the Work and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect’s responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

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

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

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

§ 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 responsibly in submitting names as required.

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

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

§ 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; and

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
§ 6.1 Owner’s Right to Perform Construction and to Award Separate Contracts
§ 6.1.1 The term “Seperate Contractor(s)” shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

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

§ 6.2 Mutual Responsibility
§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work.
promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner’s or Separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

§ 6.3 Owner’s Right to Clean Up
If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

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

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

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

§ 7.2 Change Orders
§ 7.2.1 A Change Order is a written instrument prepared by the 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.

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

Unit prices stated in the Contract Documents or subsequently agreed upon;

Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.4, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

1. Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers’ compensation insurance, and other employee costs approved by the Architect;

2. Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

4. Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

5. Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect’s professional judgment, to be reasonably justified. The Architect’s interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME
§ 8.1 Definitions
§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

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

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

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

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

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

§ 8.3 Delays and Extensions of Time
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION
§ 9.1 Contract Sum
§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

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

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

§ 9.3 Applications for Payment
§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized if required, and supported by all data substantiating the Contractor’s right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

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

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

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect’s evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect’s knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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 suppliers 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.

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

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

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

§ 9.6 Progress Payments

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

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

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

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

§ 9.6.5 The Contractor’s payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.
§ 9.6.6 A 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 or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment
If the Architect does not 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 binding dispute resolution, then the Contractor may, upon seven additional days’ notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

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

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
§ 9.9 Partial Occupancy or Use
§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers’ warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys’ fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.
§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
   .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
   .2 failure of the Work to comply with the requirements of the Contract Documents;
   .3 terms of special warranties required by the Contract Documents; or
   .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY
§ 10.1 Safety Precautions and Programs
The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in
connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property
§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to
   prevent damage, injury, or loss to
   .1 employees on the Work and other persons who may be affected thereby;
   .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site,
     under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
   .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways,
     structures, and utilities not designated for removal, relocation, or replacement in the course of
     construction.

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

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are
   necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under
   supervision of properly qualified personnel.

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

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

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

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

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

§ 10.3.2 Upon receipt of the Contractor’s notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable additional costs of shutdown, delay, and start-up.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor’s fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner’s fault or negligence.

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

§ 10.4 Emergencies
In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor’s discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.
ARTICLE 11 INSURANCE AND BONDS
§ 11.1 Contractor's Insurance and Bonds
§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect’s consultants shall be named as additional insureds under the Contractor’s commercial general liability policy or as otherwise described in the Contract Documents.

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

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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

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

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor; (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.
§ 11.3 Waivers of Subrogation
§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect’s consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceed of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect’s consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
The Owner, at the Owner’s option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner’s property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner’s property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss
§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK
§ 12.1 Uncovering of Work
§ 12.1.1 If a portion of the Work is covered contrary to the Architect’s request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect’s examination and be replaced at the Contractor’s expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to
the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor’s expense.

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

§ 12.2.2 After Substantial Completion
§ 12.2.2.1 In addition to the Contractor’s obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

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

ARTICLE 13 MISCELLANEOUS PROVISIONS
§ 13.1 Governing Law
The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction’s choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.
§ 13.2 Successors and Assigns
§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

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

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

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner’s expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect’s services and expenses, shall be at the Contractor’s expense.

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

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

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

§ 13.5 Interest
Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
ARTICLE 14  TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days’ notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor’s surety, if any, seven days’ notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery therein 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. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 11.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; 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 Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES
§ 15.1 Claims
§ 15.1.1 Definition
A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims
The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

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

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

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

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

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

§ 15.1.6 Claims for Additional Time
§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision
§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party. (2) reject the Claim in whole or in part. (3) approve the Claim. (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the
Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation
§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.
§ 15.3.4 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration
§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder
§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.
Additions and Deletions Report for
AIA® Document A201® – 2017

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

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PAGE 1

Reconstruction of Hominy Hill Golf Center
92 Mercer Road, Colts Neck, NJ 07722

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Monmouth County Park System
805 Newman Springs Road, Lincroft, NJ 07738

...

THE HE ARCHITECT:
Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:22:08 ET on 07/10/2020 under Order No. 8986884899 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, except those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)
SUPPLEMENTARY GENERAL CONDITIONS

Preface. These Supplementary General Conditions modify AIA Document A201-2017, “General Conditions of the Contract for Construction,” Provisions that are not deleted, replaced or changed by these Supplementary General Conditions shall remain in full force and effect.

Overall Change. Wherever the term “Architect” appears in the above cited General Conditions of the Contract, substitute the term “Design Professional”. The Design Professional is the Monmouth County Park System’s employee, consultant or consultants who prepared the plans and specifications of the Work to be performed under the Contract or such other person or entity designated by the Owner as the Design Professional. The Board may designate a person to act as the Owner’s Representative who may or may not be the Design Professional.

ARTICLE 1
GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

ADD after “Architect” in line 6: “with the Owner’s prior consent, or the Owner alone.”

DELETE from line 6: “Unless specifically enumerated in the Agreement,”

REPLACE “the” in line 6 with: “The”

DELETE “do not” from line 7.

1.1.2 THE CONTRACT

ADD after “The Contract Documents” in line 1, “, together with the performance bond and payment bond,”

ADD after “Architect” in line 7: “and Owner”

ADD after “Architect’s” in line 8: “and Owner’s”

ADD three clauses:

1.1.2.1 A finding by a court of law having jurisdiction that any part of the Contract Documents is contrary to the law shall not invalidate the remainder of the Contract Documents, which shall remain in full force and effect.

1.1.2.2 A finding by a court of law having jurisdiction that the application of any part of the Contract Documents to a particular situation is not reasonable shall not preclude the application of that part of the Contract Documents to other particular situations.

1.1.3.1 Where compliance with two (2) or more standards, products, details or methods of work are specified, and the standards establish different or conflicting requirements for minimum quantities or quality levels, comply with the most stringent requirements.

1.2 CORRELATION AND INTENT OF THE DOCUMENTS

1.2.1 REPLACE “indicated” in line 5 with: “intended”

1.2.2 ADD sentence: “The Design Professional and Owner will not establish or determine the subcontract limits between any parts of the Work.”
ADD two subparagraphs:

1.2.4 The Contract Documents refer to certain third-party specifications and standards that are recognized and accepted as authoritative and definitive in the construction industry. All such references are intended to mean their most recent editions. They shall have the same force and effect as they would if they were bound in the Project Manual. The Contractor shall have copies of any of those specifications and standards at the Project site for convenient reference by all parties when so directed by the Design Professional or Owner.

1.2.5 In the event of a conflict or inconsistency in or among the Contract Documents, or between the Contract Documents and applicable codes in effect at the time the Contract Sum is bid or negotiated, the Contractor shall, unless directed otherwise in writing by the Owner, provide the greatest quantity, highest quality, highest degree of safety, and most stringent material, equipment or Work.

1.5 EXECUTION OF THE CONTRACT DOCUMENTS

1.5.2 ADD sentence: “The Contractor shall not make any claims for ‘extras’ that arise from its failure to fully understand the Contract Documents and the conditions under which the Work is to be performed.”

ARTICLE 2

OWNER

REPLACE 2.1, 2.1.1 and 2.1.2:

2.1 GENERAL

2.1.1 The Owner is the Monmouth County Park System, a municipal corporation of the State of New Jersey. The Monmouth County Park System is governed by its Board of Recreation Commissioners. Only the Board of Recreation Commissioners can bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Article 4, the Design Professional does not have such authority.

2.1.2 The Owner’s Representative(s) will be an employee of the Monmouth County Park System. The Representative(s) will be identified at the pre-construction meeting. The Owner’s Representative is an agent of the Owner with a duty to protect the Owner’s interests.

2.3 INFORMATION AND SERVICES REQUIRED OF THE OWNER

REPLACE 2.3.4:

2.3.4 The site data and information contained in the Contract Documents substantially represents the Owner’s knowledge of the existing conditions at the Project Site. Upon request by the Contractor, the Owner will make available to the Contractor any other related records or data in the Owner’s possession. The Contractor is obligated to obtain at its own cost and expense any additional site data and information that may be needed to properly perform the Work.

2.3.6 ADD after “Contract documents” in line 1 “in either hard copy or electronic form, or a combination thereof.”

2.4 DELETE in line 2 “as required by paragraph 12.2.”
2.5 *ADD* after “the Architect’s additional services” in line 7, “and expenses”

**ARTICLE 3**

**CONTRACTOR**

3.1.2 *ADD* after “Contract Documents” in line 1: “and submittals approved pursuant to Paragraph 3.12.”

3.1.3 *ADD* after “Architect” in line 2 with: “and/or the Owner’s representative”

*REPLACE* “Architect’s” in line 2 with: “their.”

3.2 **REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

3.2.2 *ADD* after “as well as” in line 2: “any information known to the Contractor and”

*REPLACE* “observe” in line 4 with: “verify.”

*ADD* after “are not” in line 5: “merely”

*ADD* after “Architect” in two places in lines 7 & 8 “and Owner”

*ADD* three subparagraphs:

3.2.2.1 The Contractor shall make new Work fit existing conditions at its own cost and expense. Changes in the Work attributable to field dimensions that vary significantly from those indicated on the Contract Drawings, or those that can be reasonably inferred from them, shall be governed by Article 7.

3.2.2.2 Dimensions that are specifically provided by the Contract Drawings shall govern in the Work to be performed.

3.2.2.3 The Contractor shall establish and maintain lines and grades for the Work, and be solely responsible for their accuracy.

3.2.3 *ADD* after “Architect” in line 3 & 4: “and Owner”

*ADD* three subparagraphs:

3.2.3.1 Any errors, inconsistencies or omissions in the Contract Documents discovered by the Contractor shall be reported promptly to the Design Professional and the Owner as a Request For Information (RFI) in such form as the Design Professional and Owner may require

3.2.3.2 The Contractor shall not be liable to the Owner or Design Professional for damages resulting from the following problems unless the Contractor discovered or should have discovered the problem, and knowingly failed to report it to the Design Professional and Owner:

- errors, inconsistencies or omissions in the contract documents
- any nonconformity with applicable laws, statutes, ordinances, building codes, rules or regulations, or
- differences between field conditions and the Contract Documents.
3.2.3.3 If the Contractor performs any construction activity,

(1) knowing it involves a recognized error, inconsistency or omission in the Contract Documents;

(2) knowing that the Contract Documents are not in conformity with applicable laws, statutes, ordinances, building codes, rules or regulations; or

(3) knowing there are differences between field measurements or conditions and the Contract Documents, the Contractor shall assume full responsibility for such performance and shall bear all costs for correction, and other damages, unless the Contractor provides written notice in advance of commencing the Work activity to the Design Professional and Owner detailing the problems.

ADD paragraph:

3.2.5 The Contractor, before commencing each portion of the Work, shall carefully and closely examine all Project areas and conditions that may be affected by the Work. The Contractor shall then report in writing to the Design Professional and Owner any pre-existing damages and defects for which the Contractor believes it should not be held responsible.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 ADD after second sentence: The Contractor must implement all specific instructions in these matters when they are given by the Contract Documents (including referenced specifications and standards).

ADD after “Architect” in line 10: “or Owner”

3.3.1.1 At the preconstruction meeting, Contractors shall identify those individuals who shall supervise and direct the Work including both office and field supervisors. The on-site supervisor shall be present at all times that the Contractor’s forces are present to perform work, shall attend all progress meetings, shall attend all coordination and scheduling meetings and such other meetings as may be reasonably requested and scheduled by the Construction Manager.

3.3.1.2 The attendance at all meetings set forth above by a qualified representative of the Contractor is mandatory. Any Contractor who is not represented at these meetings without previously being excused by the Construction Manager, or who is not present at the appointed starting time of the meeting, will be assessed a penalty in the amount of $250.00 per occurrence. The amount of this penalty will be deducted from the Contractor's account through the issuance of a Change Order.

3.3.2 ADD after “acts and omission of the” in line 1: “Contractor, and its”

ADD seven subparagraphs:

3.3.4 The Contractor shall insure that its employees and Subcontractors fully cooperate with the Owner’s employees and other contractors at the site.

3.3.5 The Contractor shall coordinate their construction activities with the Owner, the Contractors subcontractors and other entities involved assuring efficient and orderly installation of each part of the Work. The Contractor shall coordinate its operations with operations included under different Sections of the specifications that depend on each other for proper installation, connection, and operation.
3.3.6 The Contractor shall be responsible for all field measurements and layouts for the
work of this Contract from reference points established by others, including
verification of existing conditions prior to the commencement of shop fabrication or
field installation.

3.3.7 The assessment of this penalty does not relieve the Contractor from the fulfillment of
all other obligations of its Contract Agreement with the Owner.

3.3.8 The Contractor shall be responsible for the daily monitoring of its work for quality
assurance compliance and shall immediately correct any conditions found to be
unacceptable and not conforming with the quality level established by the Architect,
Owner or Construction Manager.

3.3.9 When field inspections for quality assurance purposes by agencies employed by the
Owner or Construction Manager are required, the Contractor must notify the
Construction Manager's field superintendent a minimum of forty-eight (48) hours, or
two (2) working days, in advance of the date on which inspection is needed.

3.3.10 The Contractor shall at all times enforce strict discipline among their employees. Any
Contractor on the project shall employ no person at the project site who, in the opinion
of the Owner, is disruptive.

3.4 LABOR AND MATERIALS

3.4.1 ADD sentence: The Owner shall deduct charges for utilities used by the Contractor
during the course of construction up until Substantial Completion.

3.4.2 ADD after “Architect” in line 2: “or Owner”

ADD three subparagraphs:

3.4.4 The Contractor shall be solely responsible for the payment of all wages, State and
Federal payroll taxes, deductions and benefits assessments arising from its
performance of the Contract, and shall indemnify and save the Owner harmless from
all those and similar obligations.

3.4.5 The Contractor shall deliver, store and handle all materials and equipment in a manner
that will protect them from damage. Perishable materials shall be stored within
appropriate weatherproof enclosures. Finish materials shall be protected from dirt and
damage.

3.4.6 The Contractor, based on its thorough understanding of the Contract Documents,
warrants that all specified products and materials are available from customary
sources, and that they will be supplied in a timely manner.

3.5 WARRANTY

3.5.1 REPLACE “and new” in line 2 with: “new, and of recent manufacture”

ADD after “Architect” in line 8: “or Owner”

ADD four subparagraphs:

3.5.3 The Contractor shall guarantee the Work to be free of defects and deficiencies for the
one-year period following the date of Substantial Completion. Defects in the Work
that appear or are revealed during the one year guarantee period shall be promptly
remedied by the Contractor at the Contractor’s expense.
3.5.4 The Project Specifications may require certain guarantees to be in effect for more than one year after Substantial Completion, in which event the longer period will control.

3.5.5 Manufacturers’ guarantees or warranties which commence on date of shipment, date of delivery, or date of installation, shall not relieve the Contractor of its obligation to guarantee those products for one year from the date of Substantial Completion. The Contractor shall provide invoices and any supplemental information required to validate warranties.

3.5.6 The month prior to the expiration of the warranty period for all work the Owner, Architect, Construction Manager and Contractor shall review their work to confirm the requirements of the Contract have been satisfied. Any corrective work associated with the warranty will be addressed at that time, prior to the expiration of the warranty. This requirement will not modify any of the specific Contractor's obligations relative to their Contract Agreement, specifically those relating to warranties that are in effect for a period greater than one (1) year as defined in article 3.5.1.

3.6 TAXES

ADD after “Work” in line 1: “or portions thereof”

ADD new subparagraph:

3.6.1 Sales Tax Exemption - The Contractor is hereby advised that this project is exempt from New Jersey and Federal Tax. It shall be the Contractor’s responsibility to obtain the statutory sales tax exemption certificates. Exemption certificate number shall be placed on invoices for materials incorporated in work. Copies of invoices shall be furnished to the Owner through the Design Professional and upon completion of the Work, a notarized statement that all purchases made under the exemption certificate were entitled to be exempt shall be filed with the Owner. The Contractor shall pay legally assessed penalties for improper use of exemption certificate number.

STATE EXEMPTIONS #69-0220842
FEDERAL EXEMPTIONS #216000881

3.7 PERMITS, FEES AND NOTICES

REPLACE 3.7.1:

3.7.1 The Contractor shall file for and obtain all permits, licenses, and inspections that are needed to perform the Work. The Owner will pay all permit application fees which are not required to be waived by the provisions of the State Uniform Construction Code Act (N.J.S.A. 52:27D–119, et seq.). The Owner will not pay for permits or licenses that may be needed by the Contractor to deliver materials or equipment to the Project site.

3.7.2 ADD subparagraph:

3.7.2.1 The Contractor shall be solely responsible for scheduling all inspections of the Work by governmental agencies, and to obtain all certificates of occupancy that are needed for the Owner to occupy and use the completed Work. It is the Contractor’s obligation to notify the Owner of when such inspections are to take place.
3.7.3  *DELETE* “appropriate” in line 2, and replace with “full”.

*ADD* after “the costs” in line 3, “, losses and expenses”.

*REPLACE* “attributable to correction” in line 3 with “to correct such Work.”.

*ADD* subparagraphs:

3.7.6  The Contractor shall establish and maintain full and proper coordination of its Work with all public utility companies and agencies that may be impacted by the Contractor’s activities.

3.7.6.1  The Contractor is required to call 1-800-272-1000 at least three days prior to start of construction to find locations of all underground public utilities and will supply the Owner’s Representative with the confirmation number of the "One - Call" system prior to the start of construction.

3.7.6.2  In addition to underground public utilities, there may be private underground utilities under the control of the Owner. The Contractor shall contact the Owner’s Representative to ascertain whether the Owner has any such private utilities at the site and to mark-out any such private utilities. The Contractor will not proceed until receiving approval from the Owner’s Representative.

3.7.6.3  Any underground utilities shown on the Drawings have been located primarily utilizing information from various sources and are to be considered approximate both in size and location. There may be additional utilities to be encountered that are not shown on the Drawings, and it shall be the Contractor’s responsibility to locate all existing utilities and to protect same from damage or harm. All utilities or roadways interfered with or damaged by the Contractor or its representatives shall be properly restored, at the expense of the Contractor and to the satisfaction of the Owner.

3.7.6.4  The Contractor shall be solely responsible for the coordination and scheduling of the Utility Company. The Contractor must plan to allow a minimum of 60 days’ notice when the Utility Company is to furnish new poles or equipment.

3.8  **ALLOWANCES**

3.8.2.3  *ADD* after “Contractor’s costs” in line 3, “and other expenses.”

3.9  **SUPERINTENDENT**

*REPLACE* 3.9.1:

3.9.1  The Contractor shall employ a competent English-speaking superintendent who is able to read and understand the Contract Documents. The superintendent shall be present at the Project site at all times that Work is being performed. The Contractor shall advise the Owner in writing who will be the superintendent of the project. That person shall remain the superintendent for the project through and including final completion, unless the Contractor obtains the Owner’s prior written approval of a change of superintendents. The superintendent shall represent the Contractor, and all notices and other communications given to the superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing upon written request. Other communications shall be similarly confirmed on written request in each case.
3.9.1.1 The Superintendent shall not be removed from the work until all corrective and punchlist items are completed to the Owner’s satisfaction.

3.9.1.2 The Contractor shall submit the name and qualifications of the Superintendent to the Owner for its approval. The Owner may conduct an interview of the Superintendent. The Superintendent shall not be changed without the prior written approval of the Owner.

ADD subparagraph:

3.9.4 If the superintendent persistently refuses to communicate with the Design Professional or the Owner’s Representative or refuses to follow directives, is unable to expedite the work, displays an inability to coordinate the work or, in general shows himself or herself to be incompetent, the Contractor shall at the Owner’s written request remove the Superintendent from the project and assign another superintendent satisfactory to the Owner. The requirements of the foregoing subparagraphs shall apply to the new superintendent.

3.10 CONTRACTOR’S CONSTRUCTION SCHEDULES

ADD three subparagraphs:

3.10.1.1 The construction schedule shall be the responsibility of the Contractor and shall be in the detailed format set forth in Specification Section No. 01300 and satisfactory to the Owner, Construction Manager and Architect.

3.10.3.1 The Contractor shall cooperate with the Construction Manager and Owner in providing schedules updates and notification notices which may impact the Owner’s operations. The Contractor will coordinate with the Owner to provide delivery companies, trash hauling companies, etc. with proposed construction schedules, anticipated detours and durations.

3.10.4 The Design Professional and Owner shall not be responsible for notifying the Contractor when to begin, cease or resume individual activities and operations of the Work, nor to give early notice of the rejection of faulty Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.3.1 The Contractor shall construct mock ups of their work for quality assurance and approval purposes when and as instructed by the Architect or Construction Manager.

3.12.6 ADD “The Contractor represents that the material, products and equipment called for in its submittals are available from customary sources and that they will be supplied in a timely manner.

3.12.8 ADD after “the Architect has” in line 4, “, with the Owner’s prior approval,”

REPLACE 3.12.10

3.12.10 The Contractor shall be required to provide any and all professional services required by the Contract Documents or necessary to carry out the Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall provide such professional services in accordance with applicable laws and regulations, and where necessary the Contractor shall cause such services 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 professionals. Such professional services shall be provided to the Owner by the Contractor without additional cost beyond the Contract Sum.

3.12.11  **ADD** subparagraph:

The Design Professional and the Owner shall be entitled to rely upon the accuracy and sufficiency of professional certifications of performance criteria of materials, systems or equipment provided by the Contractor’s design professionals.

3.12.13  The Contractor shall prepare coordination drawings as required by the Contract Documents. The Contractor shall have 120 days to complete and submit the coordination drawings. If the drawings are not submitted within the 120 days, and the Construction Manager has not issued a written extension of time the Contractor will be assessed a penalty in the amount of $250.00 per day.

3.12.14  In addition to and concurrent with the submission of the “Schedule of Values” as provided under paragraph 9.2, Contractor shall submit a list of all materials, equipment or components which are anticipated to require more than four weeks delivery, together with scheduled ordering and delivery time table. This will be discussed and reviewed regularly at the job site meetings. Upon request by the Architect or Construction Manager, the Contractors shall be prepared to produce evidence of having placed orders for specific materials, equipment and components.

3.13  **USE OF SITE**

Renumber paragraph 3.13.1.

**ADD** eight subparagraphs:

3.13.2  The Contractor shall maintain orderly and safe traffic conditions on any public thoroughfares which are impacted by the Work. The Contractor’s traffic control plan shall be governed by Section 110 of the N.J.D.O.T. Standard Specification for Road and Bridge Construction (current edition), and be approved by all authorities having jurisdiction.

3.13.3  Utility shutdowns and other Contractor operations that will impact the Owner’s operations at the Project site or use of adjacent facilities must first be scheduled with and approved by the Owner.

3.13.4  The Contractor recognizes that the project site is located residential neighborhood, with other nearby educational facilities. The adjacent properties and existing facility will remain in operation. The Contractor will make every effort to minimize the effects of the construction operations on the everyday operations at the site with regard to the work of other contractors, as well as the use of the adjacent properties by the public. The Contractor will coordinate these operations with the Construction Manager and be responsible for the safety of the public and will provide all necessary, barricades, overhead protection, temporary fences, signs, traffic control and rerouting, dust and pollution control, etc., associated with their scope of work, so as to insure public safety at all times.
3.13.5 All Contractors will not be permitted to access the Work from any location outside of the site enclosure fence and specifically from public streets, sidewalks and private property. In addition, all Contractors will not be permitted to lift materials over these locations. If it becomes necessary for certain short term activities to be performed outside of the site enclosure fence or over public areas, the relative Contractor will be responsible for all related costs including traffic control and premium time work in order to comply with all local ordinances and other requirements set forth in the Project Documents.

3.13.6 The Contractor is responsible for the daily maintenance of the entire fence to ensure that the site is secured at all times, including during non-working hours.

3.13.7 When the conditions and activity on the site results in it being necessary, the Contractor shall be responsible for procuring an offsite location for the purpose of material storage and employee parking. In addition to complying with all local traffic and parking ordinances, the Contractor will not be permitted to stage material deliveries on the streets in the area of the Project site or otherwise impact the residential or commercial activities of all surrounding public and private entities.

3.13.8 The Contractor shall restore streets, drives, curbs, sidewalks, and other existing conditions that were disturbed by construction operations to a condition equal to their condition prior to the commencement of the work.

3.13.9 The Contractor, their subcontractors, vendors, etc. shall not erect any sign on the Project site without the prior written consent of the Owner. This consent may be withheld at the sole discretion of the Owner.

3.15 CLEANING UP

ADD three subparagraphs:

3.15.1.1 The Contractor shall clean and provide maintenance on completed construction included in their scope of work, after installation, as frequently as necessary through the remainder of the construction period.

3.15.1.2 The Contractor shall supervise its construction operations to assure that no part of the construction completed or in progress, is subject to harmful, dangerous, damaging, or otherwise deleterious exposure during the construction period. The term "clean" shall include the removal of debris from the work area to dumpsters furnished by the Contractor.

3.15.3 In the event of any dispute between the Contractor and any other contractor at the site concerning responsibility for cleaning up the premises and surrounding areas, the Contractor shall proceed diligently with the clean-up, and resolve any dispute with the other contractor. The Owner shall not be liable to the Contractor for the failure of any other contractor at the site to clean up the premises and surrounding areas, and the Contractor agrees not to make a claim against the Owner for the failure of any other contractor at the site to clean up the premises and surrounding area. The Contractor shall, however be subrogated to the Owner’s rights to pursue recompense from the other contractor for the clean-up.
3.18 INDEMNIFICATION

**REPLACE 3.18.1 and 3.18.2:**

3.18.1 The Contractor will indemnify and hold harmless the County of Monmouth, its Board of Chosen Freeholders, its Constitutional Officers (Sheriff, County Clerk, and Surrogate), the Monmouth County Park System, its Board of Recreation Commissioners and their respective servants, volunteers, and agents (collectively the “County”) for and from any and all losses, costs, damages, claims, suits and/or liabilities arising from any and all State or Federal actions of whatever kind, including Section 1983 claims, including counsel fees and costs of suit (collectively the “losses”), to which the County may be put by reason of any claim for damages of any kind to persons, business entities, or property due, in whole or in part, to the carelessness or negligence of the Contractor. It is the expressed intent of the parties hereto that the Contractor shall defend and indemnify the County even for the County’s own alleged or actual partial negligence up to and until such a time as a trier of fact, be it a judge, jury, or binding arbiter, determines that the losses were the result of the sole and complete negligence of the County.

3.18.2 The Contractor will also indemnify and hold harmless the County for and from any and all losses to which the County may be put by reason of the Contractor’s failure to pay its workers, suppliers, or subcontractors for labor or materials provided to the County.

**ADD one clause:**

3.18.3 The Contractor further agrees that the County reserves its right to monitor and actively participate in the defense of any and all claims against the County, at its own expense, if, in its sole discretion, it chooses to do so.

**ARTICLE 4**

**REPLACE** Title “ARCHITECT” with “DESIGN PROFESSIONAL”

4.1 GENERAL

4.1.1 **REPLACE** first sentence with “The Owner shall retain a Design Professional, licensed, certified or otherwise qualified to perform their services in the jurisdiction where the project is located.”

**REPLACE** subparagraph 4.2.8:

4.2.8 The Design Professional or Owner’s Representative will prepare all required Construction Change Directives and Change Order documents for signature by the parties to the Contract. The Design Professional with the consent of the Owner’s Representative may authorize minor changes in the Work as provided for in Paragraph 7.4

**ARTICLE 5**

**SUBCONTRACTORS**

5.2.3 **DELETE** second and third sentences.
ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.2 MUTUAL RESPONSIBILITY

6.2.2 ADD after “Architect” in line 3 “and Owner”

6.2.3 ADD after first sentence: The provisions of this subparagraph shall not be a limitation of the Owner’s rights against the Contractor for delays, defective work or other costs.

ADD subparagraph:

6.2.6 The Contractor, in consultation with the Owner, shall defend the Owner in any alternative dispute resolution or legal proceedings initiated by a separate contractor in which damages caused by the Contractor are alleged. The Contractor shall bear all costs and expenses arising from those proceedings, and shall pay or otherwise fully satisfy any awards or judgments against the Owner. The Contractor shall reimburse the Owner for all costs it incurs in connection with those proceedings.

6.3 OWNER’S RIGHT TO CLEAN UP

6.3.1 This obligation shall apply to clean-ups required not only during the course of construction, but also as of completion of work. In the event that the Owner is required to incur extra costs, by way of overtime charges or otherwise, in the execution of its rights under this provision, those costs shall be chargeable to the Contractor.

ARTICLE 7
CHANGES IN THE WORK

7.1 CHANGES

7.1.2 REPLACE in line 1 “Owner, Contractor and Architect” with “Owner and Contractor”.

REPLACE in line 3 “Architect alone” with: “Design Professional, with the consent of the Owner’s Representative.”

ADD six subparagraphs:

7.1.4 The Contractor shall fully substantiate and clearly document its costs for Contract Work and Change Work. The Contractor’s costs must be reasonable and directly related to pertinent requirements of the Contract Documents. The Contractor’s cost documentation must be complete and provide factual information in a form that can be rationally analyzed and readily verified by the Design Professional and Owner.

7.1.5 The Contractor’s cost documentation for Contract Work and Change Work must provide the following types of information: subcontractor’s takeoffs and cost proposals; executed subcontracts; supplier’s price quotations; bills paid by the Contractor; and the Contractor’s own takeoffs, estimates and worksheets. The approved Schedule of Values for the Contract and information from estimating guides may provide useful information, but it shall not be the sole basis for substantiating costs for Contract Work and Change Work.

7.1.6 The Contractor must promptly respond to the Design Professional’s and Owner’s requests for information to substantiate Change Order and Construction Change Directive costs. The Contractor’s failure or refusal to provide that information will
entitle the Owner to withhold all pending and future payments that otherwise may be due the Contractor until the requested information is furnished.

7.1.7 Cost elements that were omitted from, or were incorrectly accounted for in the Contractor’s Bid, shall not be recoverable by Change Order, or Construction Change Directive or Claims. A reasonable value, contemporaneous with the Bid opening date, for such omitted or incorrect cost elements shall be established to fairly and properly reconcile Change Order and Construction Change Directive costs.

7.1.8 Extensions of Contract Time for changes in the Work will be made in accordance with paragraph 8.3.

7.1.9 Except as provided in Article 7.3.1, the Monmouth County Board of Recreation Commissioners must authorize the Owner’s execution of Change Orders and Construction Change Directives for this Contract. Counsel to the Board will advise the Board concerning the legality of all proposed Change Orders and Construction Change Directives that require the Board's approval and will not recommend their approval if they are not proper under the Law.

ADD subparagraph:

7.2 CHANGE ORDERS

7.2.1 REPLACE “Architect” in line 1 with “Design Professional and/or Owner’s Representative”

REPLACE “Owner, Contractor and Architect” in line 1 with “Owner and Contractor”

ADD three subparagraphs:

7.2.2 A 10% markup (or markdown, as appropriate) of the Contractor’s net direct costs, representing the Contractor’s combined overhead and profit, will be allowed for changes in the Work that entail adjustment of the Contract Sum.

7.2.2.1 The Contractor’s subcontracts shall limit markups (and markdowns) to 10% for combined overhead and profit on the subcontractors’ substantiated net direct costs of labor and materials for changes in the Work that affect the Contract Sum.

7.2.2.2 Regardless of the number of tiers of subcontractors and suppliers, the Contractor shall be entitled to one mark-up of 10% for combined overhead and profit for work performed by subcontractors and suppliers.

7.2.3 When the aggregate dollar amount of all Change Orders already approved by the Owner equals or exceeds 7.5% of the original Contract Sum, an additional 10% markup of the Contractor’s net direct costs, representing the Contractor’s extended field office and home office overhead expenses, will be allowed for subsequent changes in the Work that entail adjustments of both the Contract Sum and Contract Time. The Contractor shall not be entitled to other costs for field office, home office or other overhead items for subsequent changes in the Work that entail adjustments of both Contract Sum and Contract Time. The Contractor agrees to waive recovery for overhead costs calculated by using the Eichleay method or other similar formulas.

7.2.4 Reasonable charges for actual extended overhead expenses may be allowed in Change Orders that otherwise adjust only Contract Time. Extended overhead expenses include salaries and payroll costs for additional supervisory personnel, and pro-rated costs of
minor equipment that was procured especially for the Work. Extended overhead expenses will not be allowed if the Contractor did not secure the Owner’s agreement-in-concept before incurring those costs.

7.3 CONSTRUCTION CHANGE DIRECTIVES

REPLACE subparagraph 7.3.1:

7.3.1 A Construction Change Directive (CCD) is a written order signed (a) by the Owner, (b) by the Owner's Representative, with regard to minor field (site) modifications, or (c) by the Owner's Representative, acting subject to the subsequent approval of the Owner, that is issued to the Contractor to direct a change in the Work. CCDs, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. A CCD shall not be binding upon any of the parties to the Contract until (a) signed by the Owner, (b) signed by the Owner's Representative, with regard to minor field (site) modifications or (c) if signed by the Owner's Representative, subject to the Owner's subsequent approval, ratified by the Owner in a resolution adopted by the Board of Recreation Commissioners.

7.3.5.1 The Contractor, if it agrees with the proposed terms and conditions of the CCD, shall promptly sign the CCD and deliver it to the Owner.

7.3.5.2 The Contractor may elect to not sign a CCD if it disagrees with any of the CCD’s proposed terms and conditions. In that event, the Contractor shall promptly deliver the CCD to the Owner, together with an explanatory covering letter.

7.3.9 ADD sentence; All payments shall be subject to approval by the Board of Recreation Commissioners.

REPLACE subparagraph 7.3.10:

7.3.10 When the Owner or the Owner’s Representative, with regard to minor field (site) modifications, and the Contractor agree with the determination made by the Design Professional concerning the adjustment in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments for a Construction Change Directive, such agreement shall be recorded by preparation and execution of an approved CCD, recorded as a Change Order, or by the preparation and execution of an Owner-approved Change Order.

ADD subparagraph:

7.3.11 Adjustments in Contract Time, which may be included in Construction Change Directives, shall be subject to the limitations, requirements and standards found elsewhere in this Article 7 and in Paragraph 8.3.

7.4 MINOR CHANGES IN THE WORK

ADD in line 1, after Architect, “with the consent of the Owner’s Representative”
ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.2 ADD at end: “If the contract time in the Agreement is designated as so many calendar days, the date of commencement of the Work shall be the day next following the Contractor’s receipt of the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.5 If a calendar date is given as the completion date, this is the date that will be adhered to.

8.2 PROGRESS AND COMPLETION

8.2.2 DELETE “knowingly” in line 1.

REPLACE “or elsewhere prior to” in lines 2 & 3 with “prior to receiving the Notice to Proceed from the Owner’s Representative or”

ADD: “The Contractor may proceed with offsite work including contracts, scheduling, submittals, etc., upon receiving a Notice of Award.

8.3 DELAYS AND EXTENSIONS OF TIME

REPLACE 8.3.1, 8.3.2 and 8.3.3

8.3.1 The Contractor may be granted an extension of Contract Time in accordance with the other requirements of this Article for the following causes:

.1 An act or neglect of the Owner or Design Professional;
.2 An act or neglect of a separate contractor employed by the Owner;
.3 Prior authorized changes in the Work which impact the overall completion schedule;
.4 Discovery of archeological finds or hazardous substances (unless part of the Contractor’s responsibilities under the Contract Documents);
.5 Acts of civil or military authorities;
.6 War or riot;
.7 Fire; floods, earthquakes, tornadoes, hurricanes or other cataclysmic natural phenomena;
.8 Epidemics or quarantine restrictions;
.9 Strikes, labor disputes, material shortages (unless there is a reasonable substitute acceptable in accordance with Paragraph 3.4 and Article 16), or freight embargoes that are beyond the control of the Contractor, and without the fault or negligence of the Contractor.
Other unforeseeable causes beyond the control of the Contractor, and without the fault or negligence of the Contractor, except for extreme weather conditions, which are addressed in paragraph 8.3.3.

8.3.2 If the events described in 8.3.1 occur, the Contractor may be granted a Time Extension only if:

1. The delay could not have been reasonably avoided by the Contractor through resequencing its construction activities, accelerating deliveries or other reasonable efforts;

2. The delay prevents construction that is critical to the timely completion of the Work;

3. The delay will directly affect the Contractor’s ability to achieve timely overall completion of the Work;

4. The Contractor notifies the Design Professional and Owner in writing within 15 days of the onset of such events; and

5. The Contractor complies with the other requirements of Article 7, Article 15, and other applicable provisions of the Contract Documents.

8.3.3 The Contractor may be granted an extension of Contract Time for delays caused by extreme adverse weather conditions, if the conditions reasonably prevented productive construction that was critical to achieving timely overall completion of the Work, and the adverse effect was so severe that it could not be overcome by resequencing the construction activities, accelerating deliveries, or other reasonable efforts. If these conditions are met, the allowable calendar day extension of time shall not be more than is shown in Table 1.

**Table 1**

Number of WORK OPPORTUNITY DAYS* to which the Contractor is limited in any one (1) calendar month due to adverse weather conditions.

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* Counting all days of the month, including Saturdays, Sundays, and Holidays.

ADD seven subparagraphs:

8.3.4 Extensions of Contract Time will not be granted for reasons that in any way are related to the financial condition of the Contractor, or of its subcontractors, fabricators or suppliers of any tier.

8.3.5 The Contractor shall not be relieved of its liability for liquidated damages if Substantial Completion is achieved later than the adjusted Contract Time.

8.3.5.1 LIQUIDATED DAMAGES (not a penalty) shall be assessed at the rate of $250/day for contracts in the maximum amount of $500,000 and $500/day for contracts in excess of $500,000 for each and every calendar day that completion of the work
overruns the CONTRACT TIME unless stated otherwise by the Owner in the proposal page.

**8.3.5.2** If Substantial Completion has been achieved but Final Completion is not achieved by the date established in the contract, Liquidated Damages will be imposed or reimposed at half the rate established in subparagraph 8.3.5.1 for each and every calendar day Final Completion is not achieved.

**8.3.6** The Contract Time will not be extended beyond the date when Substantial Completion is actually achieved.

**8.3.7** The Contract Time shall be reduced whenever changes in the Work decrease the time needed to achieve Substantial Completion.

**8.3.8** Claims relating to time shall be made in accordance with applicable provisions of paragraph 4.3.

**8.3.9** This paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents, except as otherwise provided by the terms of the Contract Documents.

**8.3.10** Extensions of time will not be allowed for adverse weather conditions affecting indoor work unless the Contractor can show a direct correlation between the two.

ADD new paragraph:

**8.4 HOURS OF WORK**

**8.4.1** Normal Working Hours Intended. All Work is intended to be performed during normal working hours (Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., prevailing time, excluding holidays) unless otherwise provided in the Project Specifications.

**8.4.2** Overtime Work. “Overtime work” means work that is performed outside of normal working hours, and on Saturdays, Sundays and holidays.

**8.4.3** Whenever the Contractor plans to perform overtime work, it shall give the Design Professional and Owner adequate advance notice so that they can make suitable arrangements for observing the Work in progress. The performance of overtime work shall be at the Contractor’s cost and expense. The Contractor shall reimburse the Owner for all added costs it incurs, including the Design Professional’s additional fees and expenses, the Owner’s labor costs, inspection costs, and other costs or expenses to observe overtime work.

**8.4.4** The Owner may, for good and reasonable cause, direct the Contractor to perform overtime work. In that event, the Owner will reimburse the Contractor by Change Order for only the premium part of the payroll costs of the overtime work so performed. The Owner will not pay the Contractor overhead and profit on those premium costs, nor for inefficiencies, loss of productivity or other indirect or impact costs associated with overtime work.
ARTICLE 9
PAYMENTS AND COMPLETION

9.2 SCHEDULE OF VALUES
ADD after “submit” in line 1: “for approval”
ADD after “Architect” in lines 2 and 4: “and Owner”
ADD in line 5: “once it has been approved by the Design Professional and Owner”

9.3 APPLICATIONS FOR PAYMENT

9.3.1 REPLACE “At least ten days before the date established for each progress payment” in line 1 with “At least ten days before the billing date as per the current Owner’s Payment Schedule”
ADD after “Architect” in line 2: “with a copy to the Owner’s Representative or if there is no outside consultant, directly to the Owner’s Representative,”
ADD after “Payment” in line 2: “(via AIA Documents G702 and G702A, or their equivalent)”
DELETE 9.3.1.1
RENUMBER 9.3.1.2 as 9.3.1.1
ADD subparagraph:

9.3.1.2 The Contractor shall, upon the Owner’s request, provide affidavits from each of the Contractor’s subcontractors and suppliers attesting that they have received all previous payments that were due them from the Contractor. The Owner’s receipt of those affidavits, if requested, will be a condition precedent to the Owner making any further payments to the Contractor.

9.3.2 ADD at end: “Payment for materials and equipment delivered and stored at the job site, but not yet incorporated in the Work, shall only be made if the cost of such materials and equipment has been itemized separately from the costs of installation, in the approved schedule of values and an invoice confirming delivery and value is presented.

9.3.3 REPLACE “no later than the time of payment” in line 2 with: “either upon incorporation in the construction or upon payment by the Owner, whichever occurs first.”
ADD subparagraph:

9.3.3.1 The Contractor shall, to the fullest extent permitted by law, indemnify and hold the Owner, and its agents and employees, harmless from all claims, damages, losses and expenses that may arise from the Contractor’s breach of the warranties required by subparagraph 9.3.3.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 REPLACE “Certificate for Payment” in line 2 with “Recommendation for Approval”
DELETE “with a copy to the Contractor” in line 2
DELETE “Contractor and” in line 3
ADD “The Owner’s Representative will within seven days of receipt of the Contractor’s Application for Payment from the Design Professional, approve, modify or deny payment. If payment is denied or modified, the Owner will notify the Contractor with a copy to the Design Professional (if applicable) as to the reasons for modifying or denying payment.”

9.4.2 REPLACE “issuance of a Certificate” in line 1 with: “Recommendation for Approval”.

ADD subparagraph:

9.4.3 Neither the Design Professional’s Recommendation for Approval of the Contractor’s payment requests, nor the Owner’s payments to the Contractor, shall relieve the Contractor of its contractual obligations to furnish and complete all parts of the Work in accordance with the Contract Documents, and such other terms and conditions that are required to preserve manufacturers’ guarantees and warranties.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1.7 DELETE “repeated”

9.6 PROGRESS PAYMENTS

REPLACE subparagraph 9.6.1:

9.6.1 The Owner prefers not to make payments to the Contractor more often than once per month. The payment schedule and related time constraints will be reviewed with the Contractor at the pre-construction conference. The Owner shall not necessarily be bound by the payment amount that is recommended by the Design Professional.

ADD new subparagraph:

9.6.1.1 The Owner’s payments to the Contractor and its Designated Subcontractors will not be for more than ninety-eight (98%) percent of the value of completed Work. The Owner, at its option, may agree to pay for materials stored offsite, provided that the Owner’s ownership rights and other interests in those materials are fully vested and protected to the Owner’s complete satisfaction, and the materials are properly protected from damage, deterioration and vandalism.

REPLACE subparagraph 9.6.2

9.6.2 Pursuant to C. 2A:30-2b, as amended (P.L. 2006, c. 96), the Contractor shall pay subcontractors with 10 days of receipt of payment from the County and subcontractors shall pay sub-subcontractors with 10 days of receipt of payment from the Contractor, unless otherwise agreed between the parties.

ADD subparagraphs:

9.6.2.1 The Contractor’s payments to designated subcontractors, and all other Subcontractors and suppliers shall be for full amount to which they then are entitled, less the retainage withheld by the Owner.

9.6.3 ADD after “Architect”: “or Owner”.

9.6.7 DELETE last sentence

9.7 FAILURE OF PAYMENT

REPLACE “If the Architect” in line 1 through “or awarded by binding dispute resolution” in line 4 with: “If the Design Professional does not issue a
Recommendation for Approval of a payment to the Contractor or the Owner does not approve a Payment, through no fault of the Contractor, within twenty days of receipt of the Contractor’s Application for Payment or notify the Contractor in writing as to the reasons why payment is not approved as per the current Monmouth County Park System Payment Schedule,”


9.8 SUBSTANTIAL COMPLETION

9.8.1 ADD two subparagraphs:

9.8.1.1 Substantial Completion in the case of a building or structure shall at a minimum include at least a temporary Certificate of Occupancy. In the case of site work, substantial completion shall include the initial grassing or restoration to include seeding and mulching.

9.8.1.2 For a project which includes both building and site work, Substantial Completion shall be deemed not to have been achieved unless at a minimum both a temporary Certificate of Occupancy has been obtained and initial grassing and restoration have been achieved.

9.8.2 ADD after first sentence: “The Contractor shall proceed promptly to complete and correct items on the list.”

9.8.3 ADD after “Architect” in lines 1 and 7: “and Owner”
ADD after “Architect’s” in line 2: “and Owner’s”

9.8.5 REPLACE with: “The Certificate of Substantial Completion, and its terms and conditions, must be accepted and signed by the Contractor before the Certificate will be approved and signed by the Owner.”
ADD: “Upon Substantial Completion of the Work or a designated portion thereof, and upon application by the Contractor, certification by the Design Professional, and agreement therewith by the Owner, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.”

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.2 ADD after “Architect” in line 2: “and Owner”

REPLACE “may be compelled to pay” in line 13 with: “justly pays”
ADD subparagraph:

9.10.2.1 The Contractor must deliver all Final As-Built Drawings and other Closeout Documents that are called for by the Project Specifications before the Owner will release the final payment or any other retained monies.

9.10.3 DELETE subparagraph 9.10.3 in its entirety.
9.10.4 *DELETE* “or” at end of clause .3

*ADD* three subparagraphs:

.5 faulty or defective Work appearing after Substantial Completion;

.6 failure of the Contractor to complete the Work within the Contract time; or

.7 incidents for which the Contractor must indemnify the Owner or others.

*ADD* new paragraph:

9.11 **PROMPT PAYMENT**

9.11.1 When the contractor has performed in accordance with the provisions of the contract, and an Application for Payment, including a properly prepared, dated and signed voucher for the work has been submitted to the Owner’s Representative by the billing date established by the Payment Schedule and the Application for Payment has been approved and certified by both the Monmouth County Board of Recreation Commissioners and the Monmouth County Board of Chosen Freeholders, the Owner shall pay the amount due. The payment to the Contractor for each approved payment shall be issued not more than 30 days after the billing date for which the Application for Payment was received. The invoice shall be deemed approved and certified 20 days after the Owner’s Representative receives it, unless, before the end of the 20 day period, Contractor is informed in a written statement of the amount withheld, the amount to be paid and the reason for withholding the payments and how the deficiency can be cured.

9.11.2 Approved invoices (bills) with a properly prepared, dated and signed voucher will be approved for payment by the Board of Recreation Commissioners no later than the first public meeting after the 20th day. After that Board approves payment of invoices (bills) with properly prepared, dated and signed voucher, invoices will be forwarded to the Board of Chosen Freeholders for their approval. All payments will be released in accordance with the Monmouth County Park System Payment Schedule and will be mailed to the Contractor. Contractor pickup of payment(s) is not allowed.

9.11.3 In the event that Alternate Dispute Resolution is needed, mediation is the method that shall be used.

**ARTICLE 10**

**PROTECTION – SAFETY PRECAUTIONS AND PROGRAMS**

10.1 The Contractor is required to establish, maintain, and implement effective programs to ensure compliance with all OSHA regulations, in addition to the Hazard Communication Standard, and advise the Construction Manager regarding the location, on site, where the Contractor's MSDS sheets are kept. The Contractor will provide the Construction Manager with all information regarding any precautionary measures that the relative Contractor must employ to protect employees, any foreseeable emergency situations, and the relative Contractor's labeling system used at the work site. The Contractor is also required to provide this information to the Owner and other entities operating at the site, and to secure similar information from the other entities operating at the site, for the protection of all employees.
10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 DELETE “; and” at end of subparagraph .2

DELETE the period at the end of subparagraph .3

ADD two subparagraphs and final sentence:

.4 the Work, materials, apparatus and fixtures from the harmful effects of weather, including snow removal needed to allow the Work to proceed; and

.5 the Work, materials, apparatus and fixtures from the harmful effects of stormwater, spring water, ground water, storm drain and sewer overflows, and the like.

The Contractor shall provide all pumps and equipment, enclosures and supervision needed to so protect the Work in the foregoing subparagraphs.

10.2.4 ADD: “The Contractor must obtain the Owner’s approval before engaging in any of these activities.”

ADD seven subparagraphs:

10.2.8 The General Prime Contractor shall remove snow or ice from the site, as required to provide safe access to the work.

10.2.9 The Contractor shall build and maintain temporary enclosures, barricades, outriggers and platforms, guards, fences, sidewalk bridges, hatch railings, shaft doors, guard lights and similar devices as may be needed or reasonably requested by the Owner to protect from injury the general public, the Owner’s employees and workers, and any other licensees or invitees on the Owner’s property.

10.2.10 The Contractor shall comply with the Owner’s rules of safety that are in force for the premises where the Work is to be performed, and with all applicable safety requirements of the Underwriter’s Laboratories, Inc., the National Fire Protection Association, Occupational Safety and Health Administration regulations and the Owner’s property insurance carriers.

10.2.11 The Contractor shall install and make operable the required fire protection and/or water systems at the earliest possible stages of the Project to facilitate providing fire protection for its construction operations and the Work.

10.2.12 The Contractor shall furnish and require the wearing of hard hats by all workers and visitors whenever they enter the construction area at the Project site.

10.2.13 The Contractor shall maintain two #10 fire extinguishers on site throughout the duration of the project. The fire extinguishers shall be permanently mounted and readily visible for immediate use if needed.

10.2.14 The General Contractor is responsible for maintaining the fenced construction area for the duration of the project including general trash removal and maintaining the grass if applicable.

10.3 HAZARDOUS MATERIAL

10.3.1 ADD three subparagraphs:
10.3.1.1 Only if so directed by the Owner’s representative, the Contractor shall retain the services of a licensed laboratory to verify the presence or absence of the material reported by the Contractor. In the event that a hazardous material or substance, as reported by the Contractor, is found to be present, the Owner shall reimburse the Contractor for the reasonable cost of the initial testing required to verify the presence or absence of the material reported by the Contractor. In the event that such material or substance is not found to be present, the Owner shall pay the Contractor for the Contractor’s reasonable cost of the testing, so long as the Owner determines that the actions of the Contractor in stopping work and reporting the conditions were reasonable.

10.3.1.2 The Contractor shall immediately furnish in writing to the Owner and Design Professional, the names and qualifications of persons or entities who are qualified and able to perform the task of removal or safe containment of such material or substance.

10.3.1.3 The Owner shall have the right to retain an independent licensed laboratory to verify the presence or absence of material reported by the Contractor or its licensed laboratory.

REPLACE paragraph 10.3.2:

10.3.2 Upon confirmation of the presence of a hazardous material or substance not addressed in the Contract Documents, the Owner will cause it to be rendered harmless.

ADD two subparagraphs:

10.3.2.1 Upon verification by the licensed laboratory retained by the Owner that the material has been rendered harmless, the Owner shall notify the Contractor and the Contractor shall promptly resume work in the area. If the licensed laboratory retained by the Owner indicates that such material or substances are not present, the Owner shall notify the Contractor and the Contractor shall promptly resume work in the area.

10.3.2.2 Adjustments to the Contract Time and Sum shall be made in accordance with Article 7, Paragraph 8.3 and Article 15. Any delay by the Contractor in providing notice to the Owner, retaining a licensed testing laboratory, providing the results of the testing or resuming work shall not be the basis for an adjustment in the Contract Time or Sum. The Owner shall have a reasonable time for the following actions, and the reasonable contract documents, time taken by the Owner shall not be the basis for compensable delays, but may be the basis for an extension of Contract Time: Responding to the Contractor’s notice that hazardous material or substances are encountered on the site by the Contractor; making decision concerning the best course of action to remove or remediate the hazardous material or substances; and retaining a contractor or consultant to remove or remediate any hazardous material or substance.

10.3.3 REPLACE “except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity” in lines 7 and 8 with: “but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, the Owner’s employees or anyone for whose acts the Owner may be legally liable, provided that any such indemnified party shall:

.1 promptly notify the Owner in writing of any matter for which it intends to seek indemnity.
.2 allow the Owner to control the defense and settlement of such matter, and 
.3 cooperate reasonably with the Owner in the investigation and defense of such 
matter.”

*ADD* subparagraph:

10.3.3.1 The Owner shall not be required to defend or indemnify any party for that party’s 
negligence, willful misconduct, fraud, intentional tort, bad faith or criminal 
wrongdoing, or for claims for punitive or exemplary damages arising therefrom.

*DELETE* paragraph 10.3.6

*ADD* paragraph:

10.4 **EMERGENCIES**

10.4.1 The Contractor must provide, with their executed Contract Agreement, a list of home 
telephone numbers for those personnel who would be contacted in the event of an emergency at 
the project during non-business working hours.

10.5 **PROTECTION OF VEGETATION**

10.5.1 The Contractor shall preserve and protect all trees, shrubs, grass and other vegetation 
that exist on or adjacent to the site and which are not required by the Contract Documents to be removed. The Contractor will be held responsible for all 
unauthorized cutting of or damage to the existing vegetation which may be caused by 
careless or reckless operation of equipment, stockpiling of materials, or tracking by 
equipment.

10.5.2 The Contractor shall exercise all reasonable care when performing required removals 
of vegetation to prevent damaging the remaining vegetation. The Contractor will be 
held liable for, and will be required to replace or restore at its own expense, all such 
vegetation that is destroyed or damaged in its performance of the Work.

10.5.3 The Contractor shall install tree guards around existing trees that are to be preserved 
on the Project site. The Contractor shall promptly repair damaged tree guards and 
must remove all tree guards upon final completion of the Work.

**ARTICLE 11**

**INSURANCE AND BONDS**

*REPLACE* 11.1, 11.2 and 11.3 with *NEW* 11.1, 11.2, 11.3 and 11.4

11.1 **GENERAL INSURANCE REQUIREMENTS**

11.1.1 The Contractor shall not commence Work until the Contractor has obtained at the 
Contractor's own expense all of the insurance as required hereunder and such insurance 
has been approved by the Owner, nor shall the Contractor allow any Subcontractor to 
commence work on any subcontract until all insurance required of the Subcontractor 
has been so obtained and approved by the Contractor. Approval of insurance required 
of the Contractor will be granted only after submission to the Owner of original 
certificates of insurance signed by authorized representatives of the insurers or, at the 
Owner's request, certified copies of the required insurance policies.
11.1.1.1 Each Contractor shall indemnify and hold the Owner, the Architect and the Construction Manager and all of their agents and employees harmless from and against any and all claims, damages, losses and expenses, including attorney’s fees, arising out of, resulting from or in connection with the project, which are caused by any error, omission, negligent or willful act of the Contractor, his agents and Employees, and any subcontractor that the Contractor may employ.

11.1.1.2 The Owner, Architect and Construction Manager may defend themselves, at the Contractor's expense, from any claim or lawsuit which may arise out of the Contractor's performance or lack of performance under the terms of this contract they may elect to have the Contractor provide them with legal representation at the Contractor's own expense.

11.1.1.3 The Owner and it employees; The Architect; and the Construction Manager, and their respective agents, servants, officers and employees shall be named as additional insured parties on all insurance policies. The insurance certificates or policy endorsements shall state that the insurance policies are written to provide primary, non-contributory coverage.

11.1.2 Insurance as required hereunder shall be in force throughout the term of the Contract and, for the coverage described in Article 11.3.1.1.iv, for two years after final acceptance of the Project by Owner. Original certificates signed by authorized representatives of the insurers or, at the Owner's request, certified copies of insurance policies, evidencing that the required insurance is in effect, shall be maintained with the Owner throughout the term of the Contract and for two years after final acceptance of the Project by Owner.

11.1.3 The Contractor shall require all Subcontractors to maintain during the term of the Contract commercial general liability insurance, business auto liability insurance, and workers compensation and employers liability insurance to the same extent required of the Contractor in 11.3.1.1, 11.3.1.2 and 11.3.1.3 unless any such requirement is expressly waived or amended by the Owner in writing. The Contractor shall furnish Subcontractors’ certificates of insurance to the Owner immediately upon request.

11.1.4 All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation, non-renewal or material reduction in coverage until thirty (30) days prior written notice has been given to the Owner.

11.1.5 No acceptance and/or approval of any insurance by the Owner shall be construed as relieving or excusing the Contractor or the Contractor's Surety from any liability or obligation imposed upon either or both of them by the provisions of this Contract.

11.1.6 All required insurance coverages must be underwritten by insurers allowed to do business in the State of New Jersey and acceptable to the Owner. The insurers must also have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest evaluation by A. M. Best Company, unless Owner grants specific approval for an exception.

11.1.7 The owner may modify or waive the insurance requirements, in appropriate circumstances. This may include allowing the contractor to assume some or all of the risks through a bona fide program of self-insurance.
11.1.8 Any deductible or retention amounts elected by the Contractor or imposed by the Contractor's insurer(s) shall be the sole responsibility of the Contractor.

11.1.9 If the Owner is damaged by the failure or neglect of the Contractor to purchase and maintain insurance as described and required herein, without so notifying the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance, or solely at the Owner's option, the Owner may self-insure the Owner's liability exposures.

11.3 CONTRACTOR'S LIABILITY INSURANCE

11.3.1 The Contractor shall purchase and maintain the following insurance coverages which will insure against claims which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Insurance shall be written for not less than the limits specified below or required by law, whichever is greater.

11.3.1.1 Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:

- $1,000,000 each occurrence;
- $1,000,000 personal and advertising injury;
- $2,000,000 general aggregate; and
- $2,000,000 products/completed operations aggregate.

This insurance shall include coverage for all of the following:

i. General aggregate limit applying on a per project basis;
ii. Liability arising from premises and operations;
iii. Liability arising from the actions of independent contractors;
iv. Liability arising from products and completed operations with such coverage to be maintained for two years after completion of the Work;
v. Contractual liability including protection for the Contractor from bodily injury and property damage claims arising out of liability assumed under this Contract; and
vi. Liability arising from the explosion, collapse, or underground (XCU) hazards, if applicable.

11.3.1.2 Business auto liability insurance or its equivalent with a minimum limit of $1,000,000 per accident and including coverage for all of the following:
i. Liability arising out of the ownership, maintenance or use of any auto;
ii. Automobile contractual liability; and
iii. MCS-90 endorsement if hazardous materials or waste are to be transported.

11.3.1.3 Workers compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including standard "other states" coverage; employers liability insurance or its equivalent with minimum limits of:
$ 500,000 each accident for bodily injury by accident;
$ 500,000 each employee for bodily injury by disease; and
$ 500,000 policy limit for bodily injury by disease.

11.3.1.4 Professional errors and omissions liability insurance with limits of at least $3,000,000 each claim and aggregate, if applicable.

11.3.1.5 Umbrella excess liability or excess liability insurance or its equivalent with minimum limits of:
$ 5,000,000 per occurrence;
$ 5,000,000 aggregate for other than products/completed operations and auto liability; and
$ 5,000,000 products/completed operations aggregate,

and including all of the following coverages on the applicable schedule of underlying insurance:
   i. Commercial general liability;
   ii. Business auto liability; and
   iii. Employer’s liability.

11.3.1.6 The County of Monmouth, Monmouth County Board of Recreation Commissioners, and their respective officers, agents, servants and employees shall be named as additional insureds on all policies except Workmen’s Compensation with respect to liability arising out of the Contractor’s work under this Contract. The commercial general liability policy and the umbrella excess liability or excess liability policies must be endorsed to provide the additional insured coverage.

11.3.1.7 Insurance or self-insurance provided to the Owner, Design Professional, Construction Manager, if any, and their respective officers, agents, servants and employees as specified herein shall be primary, and any other insurance, self-insurance, coverage or indemnity available to the Owner, Design Professional, Construction Manager, if any, and their respective officers, agents, servants and employees shall be excess of and non-contributory with insurance or self-insurance provided to the Owner, Design Professional, Construction Manager, if any, and their respective officers, agents, servants and employees as specified herein.

11.3.2 If any liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions:
i. The Contractor shall agree to provide certificates of insurance evidencing the above coverages for a period of two years after final payment for the Contract. Such certificates shall evidence a retroactive date no later than the beginning of the Work under this Contract; or

ii. The Contractor shall purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the Work under this Contract.

11.4 PROPERTY INSURANCE

11.4.1 Unless otherwise provided, the Contractor shall purchase and maintain builders risk and/or installation floater insurance at a limit sufficient to cover full replacement value. This insurance shall be maintained until final acceptance of the Work by the Owner. This insurance shall include the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work. The Owner must be specifically included as an insured under the policy.

11.4.2 Insurance shall be on an "all-risk" or equivalent policy form and shall cover debris removal including demolition occasioned by a covered loss. Coverage for flood and earthquake may be written with sublimits acceptable to the Owner.

11.4.3 This insurance shall cover all of the following types of property:

i. All structures to be constructed, under construction, and/or already constructed which are part of the Work;
   ii. All materials, equipment, machinery and supplies which are to be incorporated into the Work;
   iii. Temporary structures of any nature whatsoever; and
   iv. Underground property, including but not limited to, foundations, pump stations, pumps, pipes, drains, tanks and connections.

11.4.4 The Contractor shall be responsible for payment of any deductibles applicable under this or any other property insurance applicable to the Project.

11.4.5 Unless otherwise provided in the Contract Documents, this insurance shall cover materials to be incorporated into the Project which are off the site, and also such materials in transit.

11.4.6 This insurance shall insure against loss or damage caused by testing and start-up.

11.4.7 The Owner and Contractor waive all rights against each other and against the Design Professional and the subcontractors, sub-subcontractors, elected and officers, agents, servants and employees, for property damage to or loss of use of the Work to the extent that such property damage or loss of use is covered by this insurance, or other property
insurance applicable to the Work. The policies shall provide such waivers of subrogation by endorsement or otherwise.

11.4.8 Any loss covered under this insurance or other property insurance applicable to the Work shall be payable to the Contractor as fiduciary for the insureds, as their interests may appear, and shall be used to repair and replace damaged property, unless otherwise authorized by the Owner.

RENUMBER previous paragraph 11.4 as 11.5 and subparagraphs 11.4.1 & 11.4.2 as 11.5.1 and 11.5.2.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING WORK

12.1.1 ADD after “Architect’s” in lines 1 & 3: “or Owner’s”
ADD after “Architect” in line 2: “or Owner”

12.1.2 ADD after “Architect” in lines 1 and 2 “or Owner”

12.2 CORRECTION OF WORK

12.2.1 ADD after “Architect” in line 1: “or Owner”
DELETE “rejected” in line 3.

12.2.2.1 ADD after “the Contractor” in line 4, “, at the Contractor’s expense,”

12.2.2.2 ADD at end” The obligation under this subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract.
DELETE subparagraph 12.2.2.3
ADD new subparagraph:

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Design Professional, the Owner may remove the nonconforming elements of the Work and store the salvable materials or equipment at the Contractor’s expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Design Professional’s services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.4 BECOMES 12.2.5

12.2.5 BECOMES 12.2.6
12.3  ACCEPTANCE OF NONCONFORMING WORK

REPLACE “as appropriate and equitable” in lines 3 with: “by Change Order”

ADD four subparagraphs:

12.3.1.1 The Contract Sum may be reduced by as much as 75% of the equitable value of required Work if the Owner waives its right to have the nonconforming Work corrected or replaced by the Contractor.

12.3.1.2 The Owner’s right to have the Contractor correct or replace nonconforming Work will be reinstated if the parties fail to agree on a Change Order.

12.3.1.3 The Contractor’s right to correct or replace nonconforming Work, in lieu of agreeing to a Change Order, will be honored by the Owner at all times prior to the date of Substantial Completion.

12.3.1.4 The correction or replacement of nonconforming Work will be at the Contractor’s own cost and expense. The Contractor also shall reimburse the Owner for all added costs that it may incur to have the Design Professional and others investigate, evaluate and correct Work which is confirmed to be non-conforming.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.2  SUCCESSORS AND ASSIGNS

13.2.1  REPLACE “as a whole” in line 3 with: “in whole or in part”

ADD after the second sentence: “Consent to an assignment will not be unreasonably withheld.”

REPLACE third sentence with: “Any purported assignment without such consent shall be void.”

13.3  RIGHTS AND REMEDIES

13.3.2  REPLACE “Architect” in line 1 with “Design Professional”

ADD subparagraph:

13.3.3 No consent or waiver, express or implied, by the Owner or the Design Professional or of any breach of any covenant, condition or duty of the Contractor shall be construed as a consent to or waiver of a breach of any other covenant, condition or duty.

13.4  TESTS AND INSPECTIONS

13.4.1  ADD after “Architect” in lines 5 & 6: “and Owner”

ADD two clauses

13.4.1.1 All tests must be performed under the conditions and in accordance with the procedures called for by the Contract Documents. Test reports shall be certified by a New Jersey Licensed Professional Engineer or other appropriate duly licensed or accredited professional, and must clearly state whether or not the tested portions of the Work meet all applicable requirements of the Contract Documents. The testing professionals shall distribute copies of their reports directly to the Design Professional, the Owner, and other parties who may be identified in the Contract Documents.
13.4.1.2 All test material samples shall be made, handled, packed and shipped as prescribed by the American Society for Testing Materials, or by such other authorities as are cited in the Project Specifications.

13.4.2 ADD after “Architect” in lines 5 & 6: “and Owner”

13.4.3 ADD after “Architect” in lines 5 & 6: “and/or Owner”

13.4.5 ADD after “Architect” in lines 1 & 2: “and Owner”

ADD sentence at end: “The Owner will have the right to back-charge the Contractor for any additional costs the Owner incurs if tests to be observed by the Design Professional are not ready at the time designated by the Contractor.”

13.5 INTEREST

REPLACE “at the legal rate prevailing from time to time at the place where the Project is located.” in lines 2 and 3 with: “at the legal rate for judgments in New Jersey.”

ADD paragraph:

13.6 LIQUIDATED DAMAGES

13.6.1 The Contractor, if it fails to complete the Work within the allotted Contract Time, as it may be adjusted in accordance with the terms and conditions of the Contract Documents, shall be assessed liquidated damages (not a penalty) for each and every calendar day that the Work overruns the date on which the Contractor was obligated to achieve Substantial Completion and/or Final Completion of the Work.

13.6.2 The Owner shall recover the assessed liquidated damages by deducting the total amount of liquidated damages then due from any monies due, or that may become due, the Contractor. If said monies prove to be insufficient to cover the liquidated damages that have been assessed, the Contractor shall pay the deficiency to the Owner.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1.1 TERMINATION BY THE CONTRACTOR

REPLACE “30” in line 1 with: “60”

DELETE subparagraph 14.1.1.4.

14.1.2 DELETE from lines 1 through 3: “through no act or fault of the Contractor or Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under direct or indirect contract with the Contractor”.

14.1.3 ADD after “payment for Work’ in line 2: “properly”

14.1.4 ADD after “If” in line 1: “all of”

14.2 TERMINATION BY OWNER FOR CAUSE

14.2.1 DELETE “or” from end of clause 14.2.1.3.

ADD three subparagraphs:

.5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
.6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor’s ability to complete the Work in compliance with all the requirements of the Contract Documents; or

.7 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten days, except as permitted under the Contract Documents.

14.2.2 DELETE “, upon certification by the Architect that sufficient cause exists to justify such action,” from lines 1 and 2.

14.2.2.3 REPLACE “a detailed” in line 2 with “an”.

14.2.3 ADD at end: “and then only to the extent payable under subparagraph 14.2.4.”

14.3 SUSPENSION BY OWNER FOR CONVENIENCE

14.3.2 ADD before the word “include” in line 2: “not”

14.4.3 TERMINATION BY THE OWNER FOR CONVENIENCE

ADD after the words “Work properly executed” in line 2: “in accordance with the Contract Documents”

ADD to the end: “, but not profit on the Work not executed.”

ADD subparagraph:

14.4.4 Upon a determination by a court of competent jurisdiction that termination of the Contractor pursuant to Paragraph 14.2 was wrongful or otherwise improper, such termination shall be deemed a termination for convenience pursuant to Paragraph 14.4, and the provisions of Subparagraph 14.4.3 shall apply.

ARTICLE 15
CLAIMS AND DISPUTES

15.1.2 TIME LIMITS ON CLAIMS

DELETE the word “Binding” in line 3.

15.1.3 NOTICE OF CLAIMS

ADD to end: “A party asserting a Claim must clearly identify it as a Claim.”

REPLACE paragraph 15.1.4

15.1.4 CONTINUING CONTRACT PERFORMANCE

The Contractor shall proceed diligently with performance of the Contract pending final resolution of any and all Claims (including alternate dispute resolution and legal proceedings). The Owner, pending final resolution of pending Claims, will withhold payments to the Contractor if making such payments would reduce the Contract monies held by the Owner to an amount that would be less than the sum of the value of Work remaining to be completed, plus the retainage required by the Contract. The Owner’s estimated net value of the outstanding Change Orders, Construction Change Directives and Claims shall also be factored into that computation. Otherwise, the
Owner will continue to make payments to the Contractor in accordance with the Contract Documents.

15.1.5 CLAIMS FOR ADDITIONAL COSTS

ADD at end of first sentence: “for which the Claim is made.”
ADD at end of paragraph: “Such notice shall include, to the extent then known by the Contractor, the full details and substantiating data to permit evaluation by the Owner and Design Professional. If additional information with regard to the Claim subsequently becomes known to the Contractor, it shall be promptly furnished to the Design Professional and Owner in writing.”
ADD subparagraph:

15.1.6 CLAIMS FOR ADDITIONAL TIME

15.1.6.2 DELETE “and had an adverse effect on the scheduled completion.” in line 3
ADD at end: “, that the adverse affect was so severe that it could not reasonably be overcome by rescheduling or resequencing the construction activities, and that the asserted delay prevented productive construction that was critical to achieving overall completion of the Work within the Contract Time.”
ADD subparagraph:

15.1.6.3 Claims for additional time will be “of record” when they are made, but the Owner may, at its discretion, decline to address such Claims until the Contractor achieves Substantial Completion of all Work.

15.2 INITIAL DECISION

15.2.1 REPLACE “mediation and binding dispute resolution” in line 7 with: “alternate dispute resolution”

15.2.5 DELETE the last sentence.

15.2.6 REPLACE “mediation” in line 1 with ”alternate dispute resolution”
DELETE “subject to the terms of Section 15.2.6.1.” at the end of sentence.
DELETE subparagraph 15.2.6.1 in its entirety

REPLACE paragraph 15.2.6.1 in its entirety

REPLACE paragraph 15.3 MEDIATION with the following:

15.3 ALTERNATE DISPUTE RESOLUTION (non-binding mediation)

15.3.1 If a dispute between the Owner and the Contractor arises during the course of the contract that is not resolved pursuant to Section 15.2, the parties will participate, in good faith, in non-binding mediation.
15.3.2 Mediation is intended to be an informal process for resolving disputes between the Contractor and Owner. Both parties shall act in good faith and exercise their best efforts to achieve a reasonable settlement of disputes.

15.3.3 Either party may demand such mediation by written notice to the other party. The written notice shall contain at least: (a) A brief statement of the nature of the dispute, and (b) the name, address and phone number of that party’s designated representative for the purposes of mediation.

15.3.4 The other party shall designate its representative for mediation in writing no later than five business days after receipt of the demand for mediation.

15.3.5 The respective designees shall thereupon, and promptly, with due regard for the need for timely action, choose a mediator. If the parties cannot agree on a mediator, or if they prefer, they shall choose a reputable mediation firm. Any mediation firm so chosen shall present to the parties a list of at least five proposed mediators, along with a summary of each person’s qualifications to serve as the mediator.

15.3.6 Each party shall rank the proposed mediators in order of preference. The fifth or lower ranked person(s) on each party’s shall be excluded from further consideration. Each party shall assign a score of “4” to their first choice, “3” to their second choice, “2” to their third choice, and “1” to their remaining fourth choice. The parties’ scores for each person shall then be added together. The person with the highest combined score shall be the chosen mediator. In the event of a tie, the mediator shall be chosen by lot.

15.3.7 The parties will not be bound by the Rules of Evidence in presenting their positions before the mediator.

15.3.8 The mediation shall be conducted in such reasonable and efficient manner as may be agreed between the parties and the mediator or, lacking such agreement, as may be determined by the mediator.

15.3.9 Each party will bear its own costs of participation in mediation, and they will each pay one-half the costs of the mediator.

15.3.10 After a good faith effort to resolve the dispute through mediation, if the dispute is not resolved, either party may terminate the mediation by written notice to the mediator and the other party. In that event, either party may submit the dispute to the Superior Court of New Jersey, Monmouth County, for adjudication, which Court shall have exclusive original jurisdiction of the dispute.

DELETE paragraph 15.4 ARBITRATION

ADD two Articles:
ARTICLE 16
EQUIPMENT WARRANTIES, MAINTENANCE AND TRAINING

16.1 APPLICABILITY

16.1.1 This Article applies to all electrical and mechanical equipment in the Work for which the manufacturers furnish warranties or guarantees.

16.1.2 The provisions of this Article do not supersede any warranty, guarantee or maintenance requirements of the Project Specifications that are more particular or more stringent.

16.2 SPECIAL WARRANTY

16.2.1 The Contractor shall provide special warranties, signed by the Contractor, the installer, and the manufacturer, whereby they individually and collectively agree to replace/repair/restore defective materials or workmanship of the electrical and mechanical equipment during the warranty period.

16.2.2 “Defective” includes but is not limited to: operation or control system failures; performance below required minimums; excessive wear, unusual deterioration or aging of materials or finishes; unsafe conditions; the need for excessive maintenance; abnormal noise or vibration; or, any other unusual, unexpected or unsatisfactory conditions.

16.2.3 The minimum warranty period shall be 12 calendar months from the date of Substantial Completion.

16.3 MAINTENANCE
The Contractor and/or its installer(s) shall provide full maintenance services for all equipment by skilled competent workers during the warranty period. Those services shall include required warranty maintenance, and all routine maintenance, repairs and cleaning work that should be performed by a prudent owner.

16.4 TRAINING OF OWNER’S PERSONNEL
The Contractor shall arrange for manufacturers’ technical representatives to provide not less than one-half day of in-service training to the Owner’s personnel in the operation and maintenance of equipment. All in-service training must be completed prior to the date of Substantial Completion.

ARTICLE 17
SUBSTITUTIONS

17.1 USE OF SPECIFIED PRODUCTS WARRANTED
The Contractor warrants that the awarded Contract Sum includes the cost and use of all products and materials that are specified by the Contract Documents. However, the
Contractor, at any reasonable time after it is awarded the Contract, may propose the use of material or product substitutions.

17.2 PROPOSALS FOR SUBSTITUTIONS
The Contractor’s substitution proposals must be submitted in writing to the Architect and Owner. Each substitution proposal shall provide clear, complete and orderly feature-by-feature comparisons of the proposed substitute with the specified item. The substitution proposal also must be accompanied by catalogue cuts and all other pertinent manufacturer’s product literature for both items.

17.3 EVALUATION AND APPROVAL OF SUBSTITUTIONS

17.3.1 The Contractor’s substitution proposal will be evaluated by the Design Professional and Owner using the general criteria outlined below. The proposed substitution may be approved if it is:

.1 Readily available in sufficient quantity to prevent any delay of the Work, inspections or tests;

.2 At least equal to the specified item in terms of strength, durability, efficiency, capacity, consumption, serviceability, and ease and cost of maintenance;

.3 Compatible with the architectural, civil, electrical, mechanical, structural and landscape designs for the Project and its surrounds;

.4 Available in substantially the same color, texture and dimensions as the specified item; and

.5 Not so different from the specified item that its use would necessitate design modifications by the Design Professional.

17.3.2 The Owner’s Representative shall have the sole right to accept or reject any proposed substitutions. The Owner’s Representative’s decisions in these matters shall be final and binding on all parties. Substitutions that are accepted will constitute changes in the Work that must be accomplished by Change Order.

17.3.3 The Owner’s Representative’s acceptance of a proposed substitution shall not waive any of the collateral requirements of the Contract Documents. The Contractor shall be singularly responsible for the proper installation and performance of any substitutions that are accepted by the Owner.

17.3.4 The Owner’s Representative’s failure to act on a substitution proposal shall not mean that it is “accepted by default.”

17.4 SUBSTANTIATION AND RECONCILIATION OF COSTS

17.4.1 The Contractor shall factually demonstrate to the Owner’s full satisfaction the difference in cost between specified and substituted items. That cost difference shall
be substantiated and reconciled in accordance with the provisions of Article 7 (as supplemented).

17.4.2 The Contractor shall reimburse the Owner for any and all charges for additional services that may be incurred to have the Design Professional and others evaluate, inspect and test proposed substitutions.

17.4.3 The Contractor shall bear all increased costs of approved substitutions or, in the alternative, must by Change Order give the Owner full credit for cost reductions that result from the use of approved substitutions in the Work.

17.5 DIRECTED SUBSTITUTIONS

17.5.1 The Contractor, due to circumstances entirely beyond its control, may not be able to supply some of the specified items in a timely manner. In those instances the Design Professional and Owner may direct the Contractor to use “or equal” substitutions. The Owner, by appropriate Change Order or Construction Change Directive, will compensate the Contractor for its increased costs that reasonably may arise from directed substitutions.

END OF SUPPLEMENTARY GENERAL CONDITIONS