



Standard Terms and Conditions for Construction Agreement

Revision 5.9.2019

DEFINITIONS:

“Architect” or “Designer” means the architect, engineer or other design professional identified on page 1 of the Agreement that is the design professional of record for the Project.”

“Change Order” is a written modification or amendment in the Contract Documents or the Agreement signed by Contractor and Owner, CMA (if authorized by the CMA Agreement), CMR, DB, or General Contractor.

“Claim” means any injury, damage, demand, loss, liability, cause of action, suit, cost or expense of any kind or nature. A Claim includes all attorneys’ fees and professional fees, court costs, litigation expenses, whether incurred in an arbitration or in litigation before any court or administrative body.

“Design Builder” or “DB” means the Person identified on Page 1 of the Agreement and who has entered into a Design Build Agreement between Owner and Design Builder.

“Design Build Agreement” or “DB Agreement” means a contract or agreement between Owner and the Person identified as the DB, whereby the DB is the responsible party for the design and construction of the Project.

“CMA” means the Person, if any, identified on Page 1 of the Agreement and who has entered into a CMA agreement with the Owner.

“CMR” means the Person, if any, identified on Page 1 of the Agreement and who has entered into a CMR Agreement with the Owner.

“Construction Manager” means the CMA, CMR, DB or General Contractor.

“Construction Management as Agent Agreement” or “CMA Agreement” means a contract or agreement between Owner and the Person identified as the CMA acts as the Owner’s agent or Owner’s representative.

“Construction Management at Risk Agreement” or “CMR Agreement” means a contract or agreement between Owner and the Person identified as the CMR, whereby the CMR is designated to be the construction manager at risk and holds the contracts between the Contractor and Construction Manager.

“Contract Sum” is the total amount to complete or provide the Work including, but not limited to all, labor, material, equipment, permits, fees, sales, use and other taxes and charges applicable to the Work or Goods. The Contract Sum is set forth in the Construction Agreement including any Unit Prices, if any.

“Contractor” means (1) any Person furnishing labor, material, equipment or supplying Goods for the Project that has an agreement, whether oral or written, directly with the Construction Manager or Owner; or (2) a Supplier.

“Contractor Commencement Date” means the date the Contractor shall commence work on the Project; whether on site or off site, and shall include, but not be limited to, any pre-construction services, ordering material or equipment, preparing shop drawings or other items the Contractor needs to complete in order to perform the Work or provide the Goods in accordance with the Project Schedule or revised Project Schedule.

“Contractor Contract Time” is the period of time from the Contractor’s Commencement Date to the Contractor Scheduled Completion Date when all the work of the Contractor is to be completed or all the Goods have been provided and accepted, or the Substantial Completion Date, whichever is earlier.

“Contractor Substantial Completion Date” means the date that the Contractor must be substantially complete with all its Work.

“Contract Documents” consist of the following: (1) this Agreement; (2) the Plans and Specifications; (3) Change Orders; (4) Exhibits to this Agreement, (5) the Project Schedule; (6) Conditions of the Agreement; (7) Addenda, (8) the Proposal(s) (if any) attached to the Construction Agreement. (However, the Proposal shall be used for reference purposes and the terms of this Contract shall take precedence over the Proposal), and (9) any provision of the CMA Agreement, CMR Agreement, DB Agreement or General Contract Agreement, which contract is hereby made a part of this Agreement and shall be as binding upon the Contractor as if it was written herein, insofar as the provisions of the same relate to, or may be applied to, the Work or providing the Goods.

“Effective Date” means the date set forth on page 1 of the Agreement and is the date that this Agreement commences, and the terms and conditions become enforceable.

“Finally Complete” or **“Final Completion”** and similar words and phrases mean that the Work, including all punch list items, is fully completed and usable by the Owner and that all corrective action required in connection with any final inspection has been completed. The Final Completion Date of the Work is the date specified on page 2 of the Construction Agreement in the Section labeled Time & Dates.

“Goods” means all material, equipment, articles, or any other property or parts to be provided by the Contractor or Supplier and includes, without limitation, all services including design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

“General Contract” or **“General Contract Agreement”** shall mean a contract between the Owner and the General Contractor.

“General Contractor” or **“GC”** shall mean the Person identified as such on page 1 of the Agreement as the General Contractor.

“Initial Decision Maker” is the person rendered to make initial decisions on Claims and shall be the Construction Manager if a CMA Agreement is entered into or the Architect if a General Contract Agreement, CMR Agreement or DB Agreement is entered into.

“Laws” mean all laws, statutes, ordinances, codes, regulations, rules, orders, judgements, decrees or writs or any local, state or federal Government Authority (including any Court) and the common law, including building and zoning codes.

“Notice” means a required written notification between the Owner, Construction Manager or Contractor as identified in this Agreement.

“Notice to Proceed” means written authorization from the Construction Manager or Owner to commence all or portions of the Work.

“Payor” means the Person responsible for payment to the Contractor and shall be the Owner if the Agreement is between the Contractor and Owner or CMA, or General Contractor, CMR or DB if the Agreement is between Contractor and General Contractor, CMR or DB.

“Person” means any individual person or group of persons, corporations, limited liability companies, partnerships or sole proprietor.

“Plans and Specifications” means the Plans and Specifications for the Project prepared by the Architect or Designer. A listing of the Plans and Specifications is attached to the Construction Agreement. The Plans and Specifications are final Plans and Specifications, subject to change only by appropriate Change Order. Contractor represents that the Contractor has reviewed the Plans and Specifications and that they are sufficient to complete the Work.



“Project Contract Time” is the period of time from the Project Commencement Date to the Final Completion Date.

“Project Commencement Date” means the dates the construction of the Project shall begin as specified in on page 2 of the Agreement in Section labeled Time & Dates, as may be altered or changed at Owner’s sole discretion.

“Project Schedule” means the schedule attached to the Construction Agreement, which may be updated and revised by the Construction Manager from time to time and shall be considered to be as effective as if attached hereto, unless written Notice is provided by the Contractor within 10 days of such issuance of objection.

“Project Site” means the address of the Project as identified on page 1 of the Agreement.

“Regulated Materials” means any substance, material or waste: (1) that is or becomes regulated under any Laws; (2) that is or becomes defined as a solid waste, hazardous waste, hazardous substance, hazardous material, toxic waste, toxic substance, pollutant, or contaminate under any Laws; (3) the presence of which causes or threatens to cause a nuisance or poses or threatens to pose a hazard to the health or safety of persons; (4) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or dangerous; (5) without limitation, that contains petroleum, including crude oil or any fraction thereof; or (6) without limitation, that contains polychlorinated biphenyls, asbestos or urea formaldehyde.

“Request for Information” or **“RFI”** shall mean an official submittal of documentation submitted to the Construction Manager for clarifications or questions that the Contractor desires to have answered, including but not limited to errors, omissions, ambiguities, insufficient details, or constructability issues on the Plans and Specifications or Contract Documents.

“Required Completion Dates” shall mean collectively, or individually, the completion dates established by the Agreement, including but not limited to the Project Substantial Completion Date, Contractor Substantial Completion Dates, the Final Completion Date, or the Scheduled Completion dates.

“Scheduled Completion Date(s)” and similar words and phrases shall mean that phase or portion of the Work that is scheduled to be completed or Goods that are to be provided in accordance with the Project Schedule (as may be revised) by the Contractor or Supplier in order for: (1) other contractors, Owner or General Contractor to complete their work, (2) Owner to occupy all or portions of the Project, or (3) portions of the Project to be completed timely. The Scheduled Completion Date(s) for the Work and/or providing of Goods or portions thereof are set forth: (a) in the attached Project Schedule and (b) identified elsewhere in this Agreement and shall include, but not limited to, mandatory Scheduled Completion Dates such as providing insurance and workers compensation certificates, providing lien waiver and other pay application documentation.

“Schedule of Values” means a breakdown of the costs for various components of the Work or Goods supplied.

“Subcontractor” means a subcontractor, material supplier or laborer of the Contractor or any subcontractor, material supplier or laborer of any lower tier (i.e. sub-subcontractors), and includes all of their officers, employees, agents and representatives.

“Substantial Completion Date” and similar words and phrases shall mean the date the Project can reasonably be occupied by the Owner and used for its intended purposes. The Substantial Completion Date is specified on page 2 of the Agreement under Section labeled Time & Dates.

“Substantially Complete” or **“Substantial Completion”** and similar words and phrases mean that the Work as set forth in the Plans and Specifications can be (i) used and occupied by the Owner for its intended purpose and (ii) that all required final inspections thereof have been completed and approved.

“Supplier” means a Person providing Goods or other material for the Project that has an agreement, whether oral or written, directly with the Construction Manager or Owner.

“Work” means all construction and services required to be performed by the Contractor to fully and completely construct the Contractor’s portion of the Project described within the attached Construction Agreement in strict compliance with the Contract Documents, and includes all labor, materials, equipment, temporary facilities, tools, supplies, transportation, loading, unloading, hoisting, shop drawings, measurements, supervision, cutting, patching, cleaning protection, insurance, taxes, royalties, permits, licenses and other



services or related costs provided, or to be provided by the Contractor, to fulfill the Contractor's obligations under the Contract Documents, and all labor and materials reasonably inferable therefrom, unless such item is specifically excluded from the Construction Agreement. For those Contractor's or Suppliers providing material only, the Work shall be the providing of the Goods.

ARTICLE 1: THE WORK

1.1 General

1.1.1 The Contractor shall complete all of the Work or provide the Goods as the same is set forth in the Contract Documents. Without limiting the foregoing, the Contractor shall arrange for and/or furnish all labor, material and equipment necessary to fulfill the terms of this Contract and complete the Work or provide the Goods in strict accordance with the Contract Documents.

1.1.2 Contractor shall supervise, control and be fully liable for the Work and all Subcontractors that perform any Work or furnish any labor or materials for the Work.

1.1.3 The Contractor shall apply for and obtain, at the Contractor's expense, all necessary permits, approvals, inspections, connection or tap-in fees, consents, licenses and certificates that may be required in connection with their Work or providing of the Goods. When requested, or Notice is given, by the Construction Manager, the Contractor shall provide the Construction Manager with copies of all of the foregoing within five (5) days after such request is made. Notwithstanding the foregoing, the Owner or Construction Manager will secure the building permit and zoning permit for the Project.

1.1.4. Contractor shall immediately report to the Construction Manager any error, inconsistency or omission that the Contractor becomes aware of or should have become aware of using the standard of care of prudent contractors who are licensed in the State where work is being conducted and who are experienced in performing work similar in scope and size as the Work.

1.1.5. Unless otherwise specified, all Goods and materials shall be new. All workmanship, Goods and materials shall be of the best quality available that is consistent with the Plans and Specifications. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

1.1.6. The Work shall include any and all cutting and patching. Notwithstanding the foregoing, any patching that needs to be completed as a result of defects in the Work or improper sequencing of the Work caused by the failure of the Contractor to complete the Work as scheduled shall: (1) be completed by the appropriate contractor that has been hired for the Project for that trade or work; and (2) must notify the Construction Manager and obtain its approval prior to cutting and patching. Any costs associated therewith shall be charged to the Contractor.

1.1.7. All shop drawings, mockups or samples that are prepared or furnished by the Contractor, Supplier or any Subcontractor shall be submitted to the Construction Manager for its review in a timely fashion so as not to cause delays on the Project. The Construction Manager after its review shall forward the shop drawings, mockups or samples to the Architect or Designer, if required, (or may forward them at Construction Manager's discretion if not required) for their review and approval. No portion of the Work requiring a shop drawing, mockups or sample submission shall be started until the submission has been reviewed by the Construction Manager and Architect or Designer, if so required.

Shop drawings are for the purpose of demonstrating the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. The Construction Manager, Architect or Designer's review and approval are not conducted to determine accuracy, completeness, checking dimensions or quantities, safety precautions or to approve substitutions that are not specifically approved in an executed Change Order. The Contractor shall be liable for all mistakes or errors in shop drawings or samples. Shop drawings shall be submitted for review and returned to the Contractor in conformance with: (1) the Project Schedule; (2) Submittal Schedule developed by the Construction Manager in conjunction with the contractors and Contractor; or (3) in the event no Submittal Schedule is provided, the shop drawings, mockups and samples shall be provide sufficiently in advance so as to allow reviews and approvals by the Construction Manager, Architect and Designer (provide two weeks for each) and to not cause delays in the Project, work of contractors or Work of the Contractor. For purposes of this Agreement, the submission of Shop Drawings pursuant to this Section shall be considered a Scheduled Completion Date, subject to the provisions of Section 2.3



1.1.8 All Goods and services shall be subject to inspection by Owner, Architect, Designer and/or Construction Manager (“Purchasers”) at all reasonable times, including inspection during and at the place of manufacture. Inspection and approval by Purchasers at Supplier’s plant does not preclude rejection for defects upon discovery by subsequent inspection. Any goods and services rejected by Purchasers shall be promptly repaired or replaced at Supplier’s expense. Any and all costs incurred by Purchasers in connection with the return of goods rejected by Purchasers as defective, shall be for the account of Supplier. Should the goods and services provided by the Supplier not comply with the Contract Documents, the goods and services must be returned if instructed by the Purchasers. The Purchasers shall not be required to compensate Supplier for any re-stocking fees required by return of the Goods under this paragraph.

1.1.9 In the case of goods purchased hereunder in bulk or by any unit of measurement, it is understood and agreed that the quantity named on the face hereof is approximately only, and that this Purchase Order is intended to cover the actual requirements as may be called for by Purchaser. Payment shall be made only for the actual quantity delivered and accepted based upon the bulk or unit price herein agreed upon.

1.1.10 The Contractor shall at all times keep the Project Site free from accumulation of waste materials from its Work. The Contractor shall leave its Work in a “broom clean” condition and shall perform at least weekly job cleanup and preferably daily clean-up of its Work. Cost for this cleanup shall be included in the Contract Sum. If, after written notification is given to the Contractor, clean-up of the Contractor’s work areas and/or debris generated by its Work is not completed in 2 business days, the Construction Manager reserves the right to clean up the same and back charge the Contractor for the cost thereof at the rate of \$150 per hour and/or the Construction Manager or Owner may cause such work to be performed and the Contractor shall pay the costs thereof immediately upon demand or may reduce the Contract Sum by the amount of such costs. In the event the Construction Manager determines that cleanup is due to multiple Contractors, the Construction Manager shall allocate the cost among the contractors that Construction Manager determines is appropriate and such amounts shall be deducted by Owner or Construction Manager from amounts due Contractor or contractors.

1.2 Standard of Care.

1.2.1 The Contractor shall complete the Work in a good and workmanlike manner in accordance with the Plans and Specifications, Contract Documents, all applicable laws and regulations, including all building codes, all manufacturer’s instructions and in accordance with industry standards and practices. By starting Work the Contractor acknowledges acceptance for the responsibility of current conditions and meeting all laws, regulations and codes and shall not be permitted to seek additional compensation for changes required to meet the laws, regulations, or codes. Contractor is responsible for all field measurement and verification.

1.2.2 Start of the Work shall mean the Contractor is in acceptance of the underlying work of other contractors, unless such defective work is latent. In the event the Contractor completes Work on visually apparent, know defective work, or uncompleted work of another contractor; the Contractor shall be responsible for any necessary rework of the Contractor’s Work, (at the Contractor’s sole and exclusive expense), after the contractor with the defective work repairs, finishes or corrects its defective work.

1.2.3 In the event the defective or uncompleted Work or Goods of the Contractor, work of a contractor, or Supplier is latent, the party with the defective Work or Goods shall pay the cost of repairs, or rework for both the defective work and the work of any other contractor that needs repair or rework due to the correction of the defective work.

1.2.4 Nothing herein shall prevent the Construction Manager or Owner (if CMA Agreement has been entered into between Construction Manager and Owner) from requiring the party responsible for such defective work to make the repairs or correct the defective work. The Construction Manager shall allocate the cost of such repairs and work to the party that it reasonably believes is responsible. All costs of repairs or rework shall be paid directly by the responsible party or if costs are incurred by the Construction Manager or Owner in having the Work completed by other Contractors or by supplemental manpower. Construction Manager or Owner shall be permitted to offset or back charge Contractor from amounts due whether from the Project or other projects.

1.2.5 All Work shall be plumb, level and true or in conformance with the lines, angles or levels identified in the Contract Documents.

1.2.6 Contractor or Supplier shall suitable pack, mark and ship in accordance with its normal procedure and the requirements of common carrier or any written instructions from Construction Manager. Contractor shall secure the lowest cost



transportation available consistent with the service required. Delivery of any Goods or services shall not be deemed to be complete until actually received and accepted by the Owner or Construction Manager. Notwithstanding any agreement to pay freight transportation charges or to make a payment or advances on account, unless otherwise stated elsewhere, title and the risk of loss or damage until so accepted shall be on Supplier. Construction Manager's count will be accepted as final and conclusive on all shipments even if counted subsequent to acceptance. Items delivered in error shall be returned at Supplier's expense at Construction Manager option. Construction Manager acceptance shall not be an acceptance of quality, quantity or waiver of damage.

1.3 Changes to the Work and Change Orders.

1.3.1 All modifications or amendments of the Contract Documents shall be evidenced by a written Change Order. No amendment, modification or change in the Contract Documents, Contract Time or Required Completion Dates shall be effective unless and until a Change Order has been executed by the Construction Manager (CMA must be specifically authorized by the Owner under the CMA Agreement) or Owner and the Contractor. Construction Manager or Owner shall not be obligated to pay any amount for any Work not specifically described in the Plans and Specifications, pay any amount in excess of the Contract Sum or grant any extension in the Contract Time unless such change is evidenced by a written Change Order as described herein. In no event shall the CMA be liable for any increase in the Contract Sum or delays in the schedule due to Change Orders or be responsible for payment of such Change Order.

1.3.2 The Owner or Construction Manager may request and agree to time, and material change orders from time to time. In such event, the Contractor shall be willing to provide the Construction Manager or Owner with all records pursuant to Article 1.7 supporting such time and material costs and shall utilize its best effort to keep costs minimized. The allowable overhead and profit in such instance shall not exceed the amount set forth in Article 1.3.3 below.

1.3.3 Notwithstanding anything to the contrary contained herein, the reasonable allowance for the Contractor's overhead and profit shall not exceed a total of 10% of the actual cost of the Work for such change and in no event shall the total overhead and profit for the Contractor and its Subcontractor's (all tiers) exceed a total of 15% of the actual cost of the Work for such change.

1.3.4 In the event that the Contractor and the Construction Manager or Owner cannot agree upon the cost of a change order, or if the Construction Manager or Owner deem it necessary in the interest of the schedule of the project, the Construction Manager or Owner (if CMA Agreement has been entered into between Owner and CMA) may issue a Work Order Directive. The Contractor must complete the work issued under the Work Order Directive and may not stop work on the Project due to any disputed amount. In the event a Work Order Directive is issued the Contractor shall be paid for its actual cost of labor, material and equipment and overhead and profit pursuant to Section 1.3.3. Construction Manager or Owner shall be permitted to audit the books of the Contractor for verification of such costs pursuant to Section 1.7

1.4 Owner's Access and Occupancy.

1.4.1 Owner and Construction Manager shall have access to the Work and Project Site at all times during the performance of the Work, and Contractor shall make reasonable accommodations for any separate contractors to complete their work without undue interference or unreasonable delay.

1.4.2 Owner may occupy the Project at any time after Substantial Completion Date with the consent of all insurers (and only after Construction Manager's approval or contractual agreement with Owner). Owner or Construction Manager shall not delay or hinder the Contractor's ability to complete all punch list items after the Substantial Completion Date; provided however, the Contractor shall be required to coordinate with the Owner's operation schedule.

1.5 Safety

1.5.1. The Contractor shall be liable for the safety of and shall provide all necessary or desirable protection to prevent damage, injury or loss to, any persons performing or affected by the Work and materials and equipment to be incorporated therein and any other property at the Project Site or adjacent thereto. The Contractor shall provide all notices and comply with all applicable laws and regulations relating to safety of persons or property, including but not limited to, OSHA Regulations. The Contractor shall install and maintain all necessary or desirable, safeguards for safety and protection. The Contractor shall indemnify and hold harmless



Construction Manager and Owner for any safety violations and shall be responsible for any fines, penalties or citations levied against Construction Manager or Owner as a result of the Contractor's safety violations.

1.5.2 Prior to working on the Project Site, the Contractor shall provide the Construction Manager with a copy of the Contractor's safety Policy manual and shall provide copies of all MSDS sheets prior to use of the related product on the Project.

1.5.3 In the event that in the performance of the Work, the Construction Manager provides the Contractor with any material, tools, equipment, labor or operators, the Contractor shall be solely responsible for the direction and control of said material, tools, equipment, labor and operators in complying with safety regulations.

1.5.4 Some Projects may be required to conform to certain job specific safety standards established of the Owner, or Construction Manager. Contractor agrees that in these events, they will comply with these job specific safety standards.

1.5.5 Contractor shall comply with the Construction Manager's general safety policy as identified on the attached Construction Agreement.

1.6 Regulated Materials

1.6.1. If the Contractor discovers any violation of any laws or regulations relating to human health and safety, wetlands, underground storage tanks, asbestos, the environment or discovers any Regulated Materials on the Project Site or reasonably believes that any hazardous materials are present on the Project Site that are not otherwise identified in the Contract Documents to be used, incorporated into the Project or required to complete the work of a contractor, the Contractor shall immediately stop the Work and report the violation or condition to the Owner and the Construction Manager. When the violation has been corrected or the hazardous material or condition has been properly removed or remediated, the Contractor shall immediately resume performance of the Work. If the violation was caused by the Contractor or its Subcontractor's, or if the hazardous materials were used, generated, stored, released, disposed of or otherwise introduced to the Project Site by the Contractor or any Subcontractor, then such violation of use shall be corrected, or such hazardous materials shall be removed or remediated at the cost of the Contractor. If the violation was caused by the Owner or Construction Manager, the hazardous materials were not used, stored, generated, released or otherwise introduced to the Project Site by the Contractor or one of its Subcontractors, then the responsible party shall pay the cost of remediating or cleaning up the hazardous material and the Contractor Contract Time shall be equitably extended.

1.6.2. The Project may be subject to the regulations of the Ohio EPA requiring a so called NPDES permit and Storm Water Pollution Prevention Plan (SWP3). By execution of this Contract, the Contractor (1) acknowledges that they reviewed and understand the conditions and responsibilities of the SWP3; (2) agrees to execute any documentation necessary required by EPA to provide proof of such acknowledgment; and (3) shall abide by and assist with implementing the requirements of the SWP3.

1.7 Contractor's Books.

Contractor shall permit the Owner, Construction Manager, or any accountant or agent engaged by the Owner or Construction Manager to have access to all records, correspondence, subcontracts, purchase orders, account books, invoices, receipts, canceled checks and payrolls pertaining to the Project or the Work, upon reasonable Notice to the Contractor, at all times reasonable hereto. In addition, the Contractor shall preserve all records relating to the Project for a period of three (3) years after final payment.

1.8 Notice of Commencement.

The Owner (or Construction Manager at direction of the Owner) shall prepare and record a Notice of Commencement for the Project or prepare and provide the Notice of Commencement for certain public projects. The Contractor shall not prepare or record a Notice of Commencement and waives its right to do so. Upon preparation of the Notice of Commencement, the Construction Manager shall deliver a copy thereof to the Contractor and this Notice shall be attached as Exhibit G, and the Contractor shall deliver the Notice of Commencement by certified mail to all Subcontractors. If the Contractor receives any Notices of Furnishing, Contractor shall immediately deliver copies of the same to the Owner and Construction Manager.



1.9 Special Tests.

The Owner or Construction Manager may stop the Work for the purpose of performing special inspections or tests. If any Work is determined to be defective or non-conforming as a result of any special inspections or tests, the Contractor shall correct the Work immediately and pay the costs of such inspections and tests, but no adjustment in the Contract Time shall be made. If the Work is found to be satisfactory and conforming to the Contract Documents, the Owner shall pay the cost of such inspections or tests and the Contract Time shall be equitably extended.

ARTICLE 2: CONTRACT TIME

2.1 Commencement, Schedule & Completion

2.1.1 Commencement. The Contractor shall commence the Work no later than: (1) the Contractor Commencement Date; (2) three days after a Notice to Proceed is issued or the date specified therein whichever is later; or (3) the commencement date pursuant to the Project Schedule, unless the Contractor has been notified by the Construction Manager to delay the Contractor Commencement Date or a delay in the Project Commencement Date. The Contractor shall complete the Contractor's Work on or before the Substantially Complete Date or Scheduled Completion Dates, whichever is earlier. For Work that may involve phasing, the Contractor shall commence Work on each phase or portion of Work on the date set forth in the attached Exhibit C ("Project Schedule") except as described in Section 2.1.2 below.

2.1.2 Work Force. Contractor shall provide sufficient work force to complete the Work within the prescribed period of time(s). If the Construction Manager determines; (1) that the Work cannot be completed by any or some of the Required Completion Date(s), or (2) the Contractor is holding up progress of another contractors work, at any point during construction of the Project, the Contractor (at Construction Manager's request or Notification) shall add additional crews or work overtime (including weekends and holidays) without additional cost to the Owner. In the event that the Contractor fails to add additional crews when requested then the Construction Manager or Owner may: (a) hire additional personnel or another contractor to assist Contractor; (b) terminate this Contract and hire another contractor to complete the Work; and/or (c) charge the Contractor the amount specified in Section 2.3 for each day the Contractor fails to add additional crews. In the event the Contractor fails to complete the Work on or before the Required Completion Date(s) as a result of their failure to add crews or work overtime as requested by the Construction Manager pursuant to this paragraph, then the Construction Manager or Owner may charge the Contractor triple the amount of liquidated damages specified in Section 2.3. Any costs incurred by the Construction Manager or Owner to enforce the provisions of this Section will be at the cost of the Contractor or the Construction Manager or Owner may back charge the Contractor for amounts expended.

2.1.3 Revisions to Schedule. If the Project Commencement Date, Contractor Commencement Date or a Scheduled Commencement Date is changed or altered by the Construction Manager or Owner, the Contractor shall commence Work within (3) three days notification; however, the Work durations per the Project Schedule or other schedules provided and agreed to, shall remain the same. Such durations shall not change unless agreed to by the Construction Manager or Owner and Contractor in writing. Contractor's manpower shall be scheduled accordingly.

2.1.4 Schedule Updates. The Contractor shall provide regular updates to the Construction Manager on the Contractor's progress on its schedule for the Work and shall provide updates when requested by the Construction Manager from time to time. Schedule updates should include, but not be limited to: (1) status of long order lead time items; (2) daily job logs; (3) identification of potential delays or issues; and (4) identification of potential schedule advancements or time saving opportunity, (5) a comparison of projected schedule to actual schedule, (6) corrective measures that will be taken if the Contractor is behind schedule, (6) three week look ahead schedules for the Contractor's Work and (7) indicate work of other contractors that must be completed in order for the Contractor to complete its Work timely, if they reasonably believe or have concern that the work of the other contractor will hinder or prevent the timely completion of the Contractor's Work.

2.1.5 Contractor's Progress. At Construction Manager's request and the time or times specified in such request or requests, the Contractor shall submit to Construction Manager, progress, procurement, and man hour completion schedules, satisfactory in form and content to Construction Manager and, upon Construction Manager's request and, upon Construction Manager's acceptance of the schedules, shall prosecute the work in accordance therewith.



2.1.6 Deliveries. Shipments or deliveries shall be made at the time and in the manner specified in this Agreement. Time is the essence of this Agreement. A delay by Supplier in performance hereunder may cause Construction Manger to be liable for penalties or damages under its agreement with the Owner. Should such delay result in Construction Manger being prevented from completing the Improvement within the time required by the agreement with the Owner or cause the Construction Manager additional expense thereunder or to be liable for penalties for or damages thereunder, Supplier hereby agrees to indemnify Construction Manager and hold it safe and harmless against any and all such claims for penalties and damages.

2.1.7 Substantial Completion. On or before the Substantial Completion Date, the Owner, Construction Manager and the Contractor shall prepare and sign a punch list setting forth portions of the Work that are known to be incomplete or defective. The Contractor shall fully complete all of the Work, including all punch list items, by the Final Completion Date.

2.2 Extensions of Time. The Contractor Contract Time and the Final Completion Date shall be equitably extended if the Contractor is not able to perform any Work on the Project as a result of adverse weather that Contractor could not reasonably anticipate and is different from normal weather incurred in the area of the Project, acts of God, strikes of general applicability (and not against Contractor only), civil disturbances and other circumstances that Contractor could not reasonably have anticipated on the Effective Date and that are beyond Contractor's reasonable control. If Contractor intends to make a Claim (as defined herein) for extension of the Contractor Contract Time, Contractor must notify Owner and Construction Manager within three (3) business days after the occurrence of the event giving rise to the Claim. If Contractor fails to make any claim for extension of the Contract Time within 3 business days after the occurrence of the event giving rise to the Claim, Contractor shall be deemed to have irrevocably waived its Claim for such an extension. Any extension in the Contractor Contract Time shall be evidenced by a Change Order.

2.3 Liquidated Damages. If the Work is not completed by the Required Completion Dates, then the Contractor shall pay to the Construction Manager (or Owner if there is a CMA Agreement) as liquidated damages ("Liquidated Damages") for such delay the sum of \$1,000 per day for each day after the Required Completion Date that such Work is not completed. Contractor acknowledges that the actual amount of the damages that the Construction Manager (or Owner) would suffer as a result of any delay in completion are difficult to determine, and that the Liquidated Damages set forth in this section are a reasonable estimate of the damages that Construction Manager (or Owner) would suffer as the result of a delay. The amount of Liquidated Damages set forth in this section relates only to Construction Manager's (or Owner's) damages for a delay in the completion of the Work and does not limit the amount of damages to which the Construction Manager (or Owner) may be entitled as a result of any other failure on the part of the Contractor to perform the Work in accordance with the Contract Documents.

ARTICLE 3: PAYMENTS

3.1 Contract Sum

3.1.1 Payor shall pay Contractor the Contract Sum for the Work and/or Goods.

3.1.2 The Contract Sum may only be increased or decreased by the amount set forth in a Change Order.

3.2 Payment Procedures

3.2.1 The Contractor shall submit its Application for Payment and shall be paid pursuant to this Section 3.2, unless the provisions of the agreements between the Construction Manager and Owner are different, in which case the payment procedure of the that agreement shall prevail. Notwithstanding the foregoing, the provisions of Section 3.2.2, 3.2.6, 3.2.9, 3.2.10, 3.2.11 shall be remain enforceable in any event.

3.2.2 Within 14 days of execution of this Agreement, Contractor shall provide to the Construction Manager a Schedule of Values for the Work and/or Goods that is to be performed or provided on AIA Form G703 (or equivalent form). Such submission shall be considered a Scheduled Completion Date. In the event that Schedule of Values is attached hereto, the requirements of this section will be deemed met, unless the Construction Manager may request additional breakdown.

3.2.3 By the 20th of the month, Contractor shall submit to the Construction Manager a draft or "pencil copy" application for payment ("**Application for Payment**") on the current AIA Form G732 and G703 (or equivalent format) for all Work or Goods projected to be performed or to be provided through the last day of the current calendar month. By the 25th of the month, Contractor shall submit to the Construction Manager a final Application for Payment on the same form as referenced above for all



Work projected to be performed or Goods provided through the last day of the current calendar month. The Application for Payment shall include only labor and equipment projected to be used or furnished through the last day of the current month; materials projected to be used, furnished or installed through the last day of the current month; and materials projected to be delivered to and suitably secured at the Project Site (with the Construction Manager's permission); provided however, that in no event shall the Application for Payment be for an amount that exceeds the product of the Contract Sum and the percentage of the Work or Goods that has been completed or provided through the period of the Application for Payment, as reasonably determined by the Construction Manager. By the 10th of each month, Construction Manager will group all approved Applications for Payment and submit them to the Owner for processing. Failure of Contractor to meet this Application Payment deadline shall result in the Contractor's Application for Payment being deferred to the next pay period.

3.2.4 Subject to Payor or Owner's right to withhold payment as provided in Section 3.2.10, Owner shall pay the amount set forth in the Application for Payment, less retainage as set forth in Section 3.2.7, to the Construction Manager for distribution to the Contractor within fifteen (15) days after the Construction Manager's submission of the Application for Payment to the Owner and all other documentation required by this Contract.

3.2.5 Within ten (10) business days after the Construction Manager receives bank confirmation of receipt of Owner's funds, the Construction Manager shall issue payment to the Contractor.

3.2.6 The Contractor shall submit with each Application for Payment the following: (1) an Affidavit of Contractor setting forth the names of all Subcontractors furnishing labor or materials to the Project; (2) lien waivers for payments previously made to Subcontractors; (3) a comparison of actual expenditures with the Project budget; and (4) such other documents as the Owner, or the Construction Manager may reasonably request, including, but not limited to, affidavits, sworn statements and receipts for materials. Failure to provide the above information shall consider the Application for Payment incomplete. Any incomplete Application for Payment will not be submitted to Owner and shall not be subject to any late fees.

3.2.7 Owner or Construction Manager shall withhold retainage of ten percent (10%) of the amount of each Application for Payment.

3.2.8 The entire remaining balance of the Contract Sum, including any retainage, shall be paid on the later of: (1) thirty (30) days after the Final Completion Date; (2) the submission of an Application for Payment for final payment by the Contractor or (3) the submission of all documents and other information set forth in Section 3.2.6 or Section 4 is complete, except that all lien waivers shall be final, unconditional lien waivers. Notwithstanding the foregoing, the Construction Manager or Owner may, but shall not be required to, pay such remaining balances once they determine the Contractor's Work is satisfactorily completed.

3.2.9 Title to all Work and Goods covered by an Application for Payment shall pass to the Owner on the earlier of the date of installation or the date that the Contractor receives payment.

3.2.10 Notwithstanding anything to the contrary contained herein, payments may be withheld without interest by Owner, or Construction Manager on account of: (1) Claims made or filed by the Contractor, a Subcontractor or any third party; (2) defective Work or Goods not remedied; (3) failure of the Contractor or Subcontractor to make payments properly to any of their Subcontractors; (4) damage to another contractor's work caused by the Contractor; (5) unsatisfactory prosecution of the Work by the Contractor or any Subcontractor; (6) reasonable belief of the Owner or Construction Manager that the Work or Goods cannot be completed or provided for the Contract Sum; (7) failure of the Contractor to perform the Work or provide the Goods in a manner acceptable to the Owner or Construction Manager; (8) failure of the Contractor to maintain one or more of the Required Completion Dates, or maintain the schedule whereby Construction Manager believes the Work or providing of the Goods can be completed in a timely fashion; (9) failure of Contractor to provide sufficient manpower or sufficient skilled and knowledgeable manpower; or (10) failure of Contractor to provide the information established in Section 3.2.6 or Section 4. The Contractor shall not have the right to stop Work, slow down the Work, delay or withhold delivery of the Goods or terminate the Agreement as a result of portions of payments withheld for any of the foregoing reasons. Owner or Construction Manager shall have the right to pay by joint check, if they reasonably believe that a Claim exists with respect to any Work or Goods provided. The right to withhold payment or pay by joint check is in addition to any other rights or remedies that Owner or Construction Manager may have at law or in equity.

3.2.11 Owner or Construction Manager shall not be obligated to pay any sums due any Subcontractors but may contact Subcontractors and pay them directly or by joint check if: (1) a default occurs as provided in Section 7.1, (2) if Owner, Construction Manager or General Contractor reasonably believes Subcontractors are not being paid or are owed money, or (3) if Owner or Construction Manager reasonably determines that it is necessary to do so for the protection of the Owner or Construction



Manager. Contractor shall pay each Subcontractor, promptly upon receipt of payment, an amount equal to the percentage of completion allowed to the Contractor on account of each Subcontractor's work.

3.2.12 Failure to Timely Pay. If Contractor is not paid the amounts due pursuant to the payment terms set forth herein, then the unpaid amount shall earn interest at the prime rate as set forth in *The Wall Street Journal* on the date such payment is due.

3.3 Liens and Lien Releases.

3.3.1 Liens. If payments are made in accordance with the terms of this Contract, the Contractor shall keep the Project Site free of all liens by the Contractor or any Subcontractor. If any lien is filed, the Contractor shall take such action as may be necessary to cause such lien to be released, discharged or bonded off within 30 days after the filing thereof and shall indemnify, defend and hold Owner and the Construction Manager harmless from and against any and all Claims caused by or arising out of the filing thereof.

3.3.2 Waivers. Contractor shall execute any necessary or required lien waivers pursuant to the state in which the Project is located. Generally, the Contractor shall promptly, but in no event later than 3 days after request from Owner or Construction Manager execute a so-called conditional lien waiver ("Conditional Waiver"), prior to receipt of payment of the amounts due. Such Conditional Waiver may be permitted to have a provision that it would convert to an unconditional waiver once the Contractor receives payment for the that portion of the Work completed or all the Work if completed ("Unconditional Waiver"). Contractor shall promptly, but in no event later than 2 business days after payment is received, execute any Unconditional Waiver forms requested by the Owner or Construction. In the interest of expediting overall Project payments, the Construction Manager may require the Contractor to execute the Unconditional Waiver promptly in a simultaneous exchange of the payment for the Unconditional Waiver. Contractor recognizes and acknowledges that failure to provide the Unconditional Waiver and waivers from its Subcontractors (collectively, "Waivers") may result in Owner or Owner's lender being unable to issue payment for the Project. In the event the Contractor fails to provide the Waivers in accordance with this Agreement, the Construction Manager or Owner may offset any amounts due the Contractor by: (i) interest payments, late payment charges, lost discounts or other fees or penalties imposed by other contractors or suppliers and (ii) time and expenses incurred by the Construction Manager in obtaining the Waivers from the Contractor and handling associated administrative work at a rate of \$150 per hour.

3.3.3 Waiver Escrow Payment Account. Construction Manager may elect to set up a waiver escrow process whereby an escrow agent ("Escrow Agent") holds executed waivers from the Contractor with the agreement that waivers will not be released unless and until the Escrow Agent receives the check payable to the Contractor for the amount established in the Pay Application(s) and Escrow Agent transfers such money to the Contractor. Contractor agrees to work with Construction Manager on reasonable requests to execute any required documents to facilitate this payment and Waiver process, but in no event shall Contractor be required to execute such documents or agree to such process if the Contractor reasonably believes the process reduces its rights for securing payment.

ARTICLE 4: WARRANTIES & CLOSE-OUT

4.1 Warranties

4.1.1 Contractor's Warranty. Contractor warrants that: (1) the Work shall be performed in a good, complete, workmanlike and professional manner, and in accordance with all applicable local, state and federal laws and regulations and the Plans and Specifications; (2) all Goods, materials, and equipment furnished under the Contract Documents will be of the quality required by the Contract Documents and new; (3) the Work and Goods will be free from defects, including defects in material and workmanship, and will conform to the requirements of the Contract Documents; and (4) the Contractor has full power to enter into and fully perform this Agreement without conflict with any other agreements and no Work or service by the Contractor will in any way infringe upon or violate any rights of any third person, including, without limitation, rights of patent, trade secret, trademark, or copyright. If required by the Owner or Construction Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor shall, at its cost, remedy any defective or non-conforming Work or Goods that is discovered within one (1) year from Final Completion Date or the date that is identified elsewhere in the Plans, Specifications or Contract Documents, whichever is the longest period of time. Nothing contained in this Section 4.1, including the obligation of Contractor to remedy any defective or non-conforming Work or Goods discovered within one (1) year from the Final Completion Date,



shall establish a period of limitation with respect to any obligations that the Contractor may have under the Contract Documents. Establishment of the one (1) year period for correction of Work or Goods relates only to the specific obligation of the Contractor to correct the Work or Goods, but the obligation to comply with the Contract Documents may be enforced at any time (up to the maximum time allowed by law) or commence at any time, proceedings to establish the Contractor's liability.

4.1.2 Manufacturer's Warranties. On or before the Substantial Completion Date, the Contractor shall collect and index all warranties and guarantees of all third parties and shall assign and deliver to Construction Manager for delivery to the Owner. Without limiting the foregoing, the Contractor shall provide to the Owner, as applicable: (1) all warranties and guarantees for the mechanical and electrical equipment; (2) a certificate certifying that the sub-base, base and surface preparation and paving of all parking areas has been properly installed and completed; (3) an engineer's inspection report certifying that all concrete work, including the mixing and reinforcing, has been properly installed and completed; (4) a certification relating to all plate and safety glass; (5) an HVAC balancing and testing report; and (6) a certification of any other items or materials deemed reasonably necessary by the Construction Manager. The Owner or Construction Manager shall not be obligated to make the final payment until all such documents have been delivered.

4.2 Close-Out

4.2.1 As Built Drawings. Contractor shall provide Construction Manager as built drawings showing the as built condition with clear, neatly recorded markups. Mark ups, where applicable, should reference any associated Change Orders. Contractor shall also provide marked up shop drawings and/or specifications, if applicable.

4.2.2 Maintenance and Operation Manuals. Contractor shall provide to the Construction Manager any maintenance and operation manuals, startup procedures, programming and cleaning instruction, wiring diagrams, and if requested by Construction Manager or Owner, password, or software access information necessary for Owner operation of its facilities (nothing herein shall require Contractor to provide proprietary software information). The information shall be organized and provided in binders or bound packet.

4.2.3 Training. Contractor shall provide Construction Manager and Owner personnel with training on all systems, and equipment and shall show evidence of such training by a sign off from the Construction Manager and Owner personnel. Contractor shall be available to answer questions or assist with maintenance or operational problems, issues or questions during the 1-year warranty period and shall conduct a follow up training and maintenance review prior to the expiration of any warranty periods.

ARTICLE 5: RISK ALLOCATION

5.1 Contractor's Indemnity. Contractor shall indemnify, defend and hold harmless the Owner, Construction Manager, and their respective officers, members, managers, agents and employees from and against any and all injuries, claims, damages, liabilities, losses, fines, penalties, demands, causes of action, suits, costs or expenses, including, but not limited to, attorneys' and professional fees and court costs, arising out of, relating to or resulting from (1) the performance of the Work by, or any act or omission of, the Contractor, a Subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable; (2) any breach of the terms of this Agreement, (3) the Contractor, any Subcontractor or anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, bringing Regulated Materials onto or near the Project Site or adjacent sites (that are not specified or required to be utilized to complete the Work) or mishandling the Regulated Material; or (4) termination of any Agreement or agreements or contracts. In Claims against any person or entity indemnified under this section, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or other benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts or other employee benefits acts.

5.2 Contract Documentation Conflicts. If there is any conflict among the Contract Documents, any Change Orders shall have precedence over this Agreement; this Agreement shall have precedence over the Plans and Specifications; the Plans and Specifications shall have precedence over the Project Schedule. Notwithstanding the foregoing, in the event of ambiguity between any Contract Documents, the higher quality, higher cost or higher quantity shall prevail. unless specifically addressed in a Change Order, RFI, Addendum or bulletin. The Contract Documents represent the entire and integrated agreement between the parties and supersede all prior negotiations, representations or agreements, either written or oral, including, but not limited to, the bid documents and the Contractor's proposal.



5.3 Consequential Damages. The Construction Manager, Owner and Contractor waive any Claims against each other for consequential, special or punitive damages of any kind or nature arising out of or relating to this Agreement or the Contract Documents.

ARTICLE 6: INSURANCE

6.1 Property Insurance

6.1.1 The Owner shall purchase or cause to be purchased and maintain in a company lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on a “special forms – causes of loss” policy form, including builder’s risk, in the amount of the contract sums for all contractors involved with the Project on a replacement cost basis. Such property insurance shall be maintained until final payment for the Project has been made.

6.1.2 A loss under the Owner’s property insurance shall be adjusted by the Owner and made payable to the Owner.

6.2. General Liability Insurance

6.2.1 The Contractor and its Subcontractors shall purchase from and maintain in a company lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from (1) Claims under workers’ compensation acts and other employee benefit acts that are applicable in statutory amounts; (2) Claims for damages because of bodily injury, including death; (3) Claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor’s operations under the Contract, whether such operations are by the Contractor or by a Subcontractor; (4) Claims under employer’s liability insurance. Insurance limits shall be in the following minimum amounts, unless otherwise noted in the attached Construction Agreement (whichever is greater):

A. Bodily injury by accident/bodily injury by disease each employee/bodily injury by disease policy limit; death	\$1,000,000
B. Automobile liability insurance (including non-ownership and hired car coverage) e ach person per occurrence.	\$1,000,000
C. Commercial general liability insurance. Combined single limit/Aggregate	\$1,000,000/\$2,000,000
D. Umbrella/excess policy	\$2,000,000
E. Environmental Liability Insurance	\$100,000
F. Claims for damages to property, other than the Work itself	\$1,000,000

6.2.2 The commercial general liability insurance shall include endorsements or coverage for contractual liability, products liability, completed operations liability and liability for acts of Subcontractors, policy shall be primary and non-contributory to any other insurance. All coverage shall be maintained without interruption from the Effective Date until at least two (2) years after the Final Completion Date.

6.2.3 The Owner, Construction Manager and their officer’s, director’s, shareholders and employees (or other Person’s identified in any agreement between the Owner or Construction Manager) shall be named as an additional insured on such policies and such policies shall require that it will not be modified or cancelled without 30 days’ prior written Notice to the Owner and the Construction Manager. Additional Insured form shall include Completed Operations. The Contractor shall provide a Certificate of Insurance acceptable to the Owner and the Construction Manager evidencing such insurance prior to commencement of the Work and at least five (5) business days prior to the expiration of the existing policy. All Subcontractor and Contractor’s insurance carriers must maintain an AM Best rating of A- or better.

6.2.4 Insurance certificates and workers compensation certificates shall be provided from the Contractor to the Construction Manager prior to commencing Work on the Project Site and shall be considered a mandatory Scheduled Completion Date. Construction Manager or Owner may take necessary actions for such failure to meet this insurance Scheduled Completion Date as identified elsewhere in this Agreement, including but not limited to: (1) stopping Contractor Work on the site and/or (2) enforcing the provision of Section 2.3.



6.3 Waivers of Subrogation

The Owner and the Contractor waive all rights against each other and any of their Subcontractors, members, officers and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section 6.1 or other property insurance applicable to the Work. The insurance policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person had an insurable interest in the property damaged.

6.4 Payment and Performance Bond.

At the request of the Owner, the Contractor shall deliver to the Construction Manager before the Contractor Commencement Date, a payment and performance bond in a form and from a surety acceptable to the Owner and Construction Manager in the amount of the Contract Sum. If the payment and performance bond was not required prior to the execution of this Contract, then a Change Order for the actual cost of the payment and performance bond shall be executed. Under no circumstances shall payment be made by the Owner or Construction Manager to the Contractor prior to receipt of the payment and performance bond.

ARTICLE 7: TERMINATION RIGHTS

7.1 Termination for Cause

7.1.1 The Owner or Construction Manager may terminate the Contract if:

1. The Contractor fails to perform or observe any term or condition of the Contract Documents required to be performed or observed by the Contractor, within the later of: (1) 48 hours after written Notice from the Owner or Construction Manager, or (2) the time frame specified in the Notice;
2. The Contractor fails to provide sufficient manpower to complete the Work timely or fails to meet any Completion Dates;
3. The Contractor does not remedy defective Work;
4. The Contractor files a voluntary petition in bankruptcy or the commencement of a bankruptcy or similar proceeding by the Contractor;
5. The Contractor fails, within 30 days, to dismiss any involuntary bankruptcy petition or other commencement of a bankruptcy or similar proceeding against the Contractor or to lift a stay of any execution, garnishment or attachment of such consequence as will impair its ability to perform the Contract with the Owner;
6. The Contractor is adjudicated as bankrupt or insolvent, admits in writing that it is insolvent, or is generally unable to pay its debts when due;
7. The Contractor makes an assignment for the benefit of its creditors;
8. The Contractor enters into an agreement of composition with its creditors; receives the approval by a court of competent jurisdiction of a petition applicable to the Contractor in any proceeding for its reorganization instituted under the provisions of any state or federal bankruptcy or similar law;
9. The Contractor has appointed by final order, judgment or decree of a court of competent jurisdiction of a receiver of the whole or any substantial part of the properties of the Contractor;
10. The Contractor dissolves or is liquidated;



11. Any representation or warranty made by the Contractor in this Agreement or in any report, certificate, application, financial statement or other instrument furnished by the Contractor pursuant thereto shall prove to be false, misleading or incorrect in any material respect as of the date made;

12. The Contractor ceases work on the Project for a period of five (5) days, abandons the Project or ceases to do business for any reason whatsoever;

13. Any lien arising out of the Work is filed against the Project (other than liens resulting from Owner's failure to pay amounts due) or a claim is made, or lien filed against funds held by the Owner by any creditor of the Contractor and is not discharged or bonded off by the Contractor within thirty (30) days; or

14. The Contractor fails to promptly pay any Subcontractors and obtain lien waivers or otherwise to pay or perform any obligations under the Contract Documents or other agreements entered into in connection with the Project, unless a bona fide dispute exists and is being resolved through appropriate proceedings timely instituted and diligently pursued.

7.1.2 If this Agreement is terminated for cause as provided in this section, then the terminating party may (1) take possession of the Project and all materials, equipment, tools, construction equipment and machinery thereon; (2) finish the Work by whatever reasonable method they may deem appropriate; (3) withhold any further payment to the Contractor; (4) take an assignment of any Subcontracts or purchase orders, which assignment(s) the Contractor is obligated to make; and (5) pursue any and all other remedies available at law or in equity.

7.2 Termination without Cause

7.2.1 The Owner, or Construction Manager shall have the right to terminate the Contract without cause and for any reason whatsoever immediately upon written Notice to the Contractor from the Owner or Construction Manager.

7.2.2 If the Owner or Construction Manager terminates for any reason and without cause before the Contractor Commencement Date then the Contractor shall not be entitled to any payment unless Owner or Construction Manager has specifically authorized the Contractor in writing to order certain materials, in which case Owner or Construction Manager shall pay to the Contractor the cost of such materials to the extent the order cannot be canceled and the cost of delivering such materials to a location specified by the Owner. If the Owner or Construction Manager terminates for the convenience after the Contractor Commencement Date, then the Contractor shall be entitled to receive an amount equal to a product of the Contract Sum multiplied by the percentage of the Work completed.

ARTICLE 8: AUTHORITY OF CMA

8.1 Limits of liability. The Owner has appointed the CMA as the Owner's agent for purposes of performing part of the Owner's agreements and obligations under the Contract Documents. In no event shall the CMA have any personal liability for any failure of the Owner to perform any agreement or obligation under the Contract Documents, including but not limited to termination provisions. The CMA is not taking any action with respect to the Work or providing of Goods, in its own name or on its own behalf. While the CMA may be coordinating the delivery of payments from the Owner to the Contractor or take other action authorized in its CMA Agreement, the Contractor acknowledges that the Construction Manager is not personally liable for any of the Owner's obligations hereunder and that there is no privity of contract between the CMA and the Contractor. Any Claim against the CMA by the Contractor including but not limited to interference of contract claims shall be held invalid and unenforceable, no matter the theory in equity or law.

8.2 Monitoring Work. CMA has the authority to monitor the Work of the Contractor and is authorized to reject any Work and require any additional testing to make sure that the Contractor is in conformance with the Contract Documents. Any additional testing, inspections and corrective action required shall be at the cost of the Contractor if the Work is found to be not in conformance with the Contract Documents.

ARTICLE 9: CLAIMS AND DISPUTES

9.1 Initial Decision Maker. 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 and Contractor or the Construction Manager and Contractor. 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 for additional supporting data from the claimant or a response with support 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 lack 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.

9.2 Dispute Resolution.

9.2.1 Mediation. For any Claims or disputes between the Contractor and the Owner or Contractor and Construction Manager arising out of or relating to the Contract Documents, the Agreement or the Work, the parties shall endeavor to resolve the Claim between them by mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with the then current Construction Industry Mediation Procedures of the American Arbitration Association. A request for mediation shall be made in writing and delivered in accordance with the Notice provisions sated in Section 10.1. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 mutual agreement of the parties or by the order of a court

9.2.1.1 The parties shall share the mediator's fee and any filing fees equally.

9.2.1.2 The mediation shall be held in the place where the Project is located.

9.2.1.3 Any agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

9.2.2 Binding Dispute. In the event the parties do not resolve a dispute through mediation as described in Section 9.2.1 above, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in Lucas or Wood County, OH, unless the parties mutually agree otherwise.

ARTICLE 10: GENERAL PROVISIONS

10.1 Notices. All Notices or communications shall be in writing and shall be sent by personal delivery; nationally recognized overnight courier; or certified mail, return receipt requested or via e-mail with a written confirmation from recipient of the receipt of such Notice. All Notices shall be deemed to be given on the date actually received. Either party may change its address by Notice given as provided in this Contract.

10.2 Severability. If an arbitrator or court of competent jurisdiction holds any portion of any Contract Document invalid or unenforceable, such holding shall not affect the remainder of the Contract Document and all other Contract Documents, and the remainder of the Contract Documents and all other Contract Documents shall remain in full force or effect.

10.3 Assignment. Contractor shall not assign any Contract Document or any interest therein without the prior written consent of the Owner. Owner or Construction Manager may assign its interest hereunder.

10.4 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal and legal representatives, successors, and assigns. The CMA, if applicable, shall be deemed to be a third-party beneficiary of this Agreement. Each party represents and warrants that this Agreement is the legal, valid and binding obligation of that party, enforceable against that party in accordance with its terms.

10.5 Governing Law. The Contract Documents shall be governed by and construed in accordance with the laws of the State where the Project Site is located.

10.6 Amendment. Acceptance of this Agreement shall be deemed to constitute an agreement on Contractor's part to the conditions hereof and supersedes all previous agreements. Acceptance of this Agreement is expressly limited to the terms herein. Any additional or different terms proposed in an acceptance are deemed rejected unless consented to in writing by both parties to such additional or different terms. No amendment or modification of this Agreement shall be effective unless it is in writing signed by the



Contractor and Owner or Construction Manager if authorized under its CMA Agreement. Notwithstanding the foregoing, the Additions and Deletions Report attached to this Agreement shall be part of the Agreement.

10.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which may be deemed to be an original, but all of which shall constitute but one and the same document.

10.8 Essence of Time. Time is of the essence in the performance of all agreements and obligations hereunder.

10.9 Entire Agreement. The parties agree that this Agreement sets forth their entire Agreement and there are no promises or understandings other than those stated herein. This Agreement is to be governed in accordance with the law of the state where the Project is located, or the materials are Goods are incorporated or utilized. No waiver by either party of any breach of any of the covenants or conditions herein contained, performed by the other party shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition.

