

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.

*(Paragraph deleted)*

#### **§ 10.4 Emergencies**

In an emergency "immediately" 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. The word "immediately", for the purposes of this paragraph shall mean a time period which is less than the time it would take to notify the Owner's Representative of the emergency.

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

#### **§ 11.1 Contractor's Insurance and Bonds**

**§11.1.1** All insurance purchased by Contractor shall constitute primary insurance and primary coverage for all risks insured and that any other liability insurance that Fuller and D'Angelo, P.C. may procure or maintain is secondary and that there shall be no contribution by such insurance until insurance provided by the Contractor is exhausted

**§11.1.1.1** The following insurance coverages and requirements must be provided by the contractor and evidence of same must be certified to the Owner, Owner's Representative and Fuller & D'Angelo, P.C. prior to commencing any work under this **contract**, and original certificates of insurance shall be furnished prior to the contract signing.

**§11.1.1.2** **Certificates of Insurance:** Each certificate shall include the following clause:

- .1 It is agreed that prior to any cancellation of, or material change in the policies certified to on this Certificate, 30 days written notice, by certified mail, return receipt requested, shall be sent to the Owner, Owner's Representative and Fuller & D'Angelo, P.C. Architects & Planners, prior to the effective date of such change or cancellation."
- .2 Shall specifically describe the work to be performed and the job site location.
- .3 Shall include Owner, Architect and Owner's Representative as "Additional Insured".
- .4 A copy of the endorsement(s) providing additional insured sections must be attached to the Certificates.
- .5 Additional Insured status shall be provided by ISO endorsement CG 20 10 11 85 or its equivalent".

**§11.1.1.3** The Contractor acknowledges that failure to obtain such insurance on behalf of the Owner constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Owner. The Contractor is to provide the Owner with a Certificate of Insurance, evidencing the requirements have been met, prior to the commencement of the work or use of the facilities. Failure to provide said insurance shall cause the immediate suspension of all work and possible cancellation of this contract.

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

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- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§11.1.2 Certificates of Insurance:** Each certificate shall include the following clause:

- .1 It is agreed that prior to any cancellation of, or material change in the policies certified to on this Certificate, 30 days written notice, by certified mail, return receipt requested, shall be sent to the Owner, Owner's Representative, Construction Manager and Fuller & D'Angelo, P.C. Architects & Planners, prior to the effective date of such change or cancellation."
- .2 Shall specifically describe the work to be performed and the job site location.
- .3 **Shall include to the fullest extent permitted by law, the Contractor shall, defend, indemnify and hold harmless the Owner, Architect, Construction Manager, their Consultants and their respective members, directors, officers, agents, employees, successors, and assigns (collectively "Indemnitees") from and against any and all losses, claims, costs, damages, expenses, and attorneys' fees, arising out of or resulting from the performance of the Work, or by Contractor's breach of this Agreement, except to the extent caused by the sole negligence or willful misconduct of any Indemnatee hereunder. The Contractor and each of its Subcontractors and to all Shared Services Contracts (Purchase Order Agreements) shall include the Owner, Architect, Construction Manager and their Consultants as Additional Insureds on their casualty and commercial liability insurance policies on a primary and non-contributory basis, including a waiver of subrogation, acceptable to Owner, and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured and the endorsement shall not require a written agreement with the Additional Insureds. Additional Insured status shall be provided by ISO endorsement CG 20 38 04 13 and CG 20 37.**
- .4 A copy of the endorsement(s) providing additional insured sections must be attached to the Certificates.

**§11.1.3** The Contractor acknowledges that failure to obtain such insurance on behalf of the Owner constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Owner. The Contractor is to provide the Owner with a Certificate of Insurance, evidencing the requirements have been met, prior to the commencement of the work or use of the facilities. Failure to provide said insurance shall cause the immediate suspension of all work and possible cancellation of this contract.

*(Paragraph deleted)*

**§11.1.4** The Contractor agrees to carry as a minimum the following insurance in such form and with such insurers as are satisfactory to the Owner covering the work hereof:

- .1 **Workmen's Compensation and Employers Liability Insurance:** Statutory Workmen's Compensation and Employers Liability insurance coverage as required by the State Law in which the project site is located, and in the state in which the contractor is domicile, and licensed to do business, and for all of his employees to be engaged in work on the project under this contract, and in case such work is sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation and Employer's Liability insurance for all of the employees to be engaged in such work. Provide Statuary Limits and Coverages
- .2 **Commercial General Liability Insurance** Including Premise/Operations, Independent Contractors, Products and Completed Operations, Broad Form Contractual, Broad Form Property Damage, Broad Form General Liability Endorsement and blanket coverage for underground hazards; X (explosion) C (collapse) U (underground).

Minimum Limits:

Each Occurrence:	\$1,000,000.00
General & Product Liability Aggregate: (General Aggregate to apply on a per project basis).	\$2,000,000.00.
Personal Injury:	\$1,000,000.00.
Fire Damage Legal:	\$50,000.00.
Medical Payment:	\$10,000.00

Other Requirements: No Explosion, Underground, Collapse (XCU) exclusions.

- .3 Bodily injury including death arising from any occurrence for the period and time for this specific work contract, including any contractual agreement assuming liability of Owner by terms of contract agreement in an amount of not less than the amount as stated above.

a. Coverage and limits required in no way restrict or relieve the contractor from the full and complete responsibility for all injuries and/or damages and it is suggested that the contractor consult their agent or broker to be certain their coverage, in form and limits, is sufficient for their needs.

- .4 **Automobile Insurance.** Business Automobile liability insurance coverage format shall be as required by the state law in which any and all vehicles are registered, and must include all owned, hired or non-owned vehicles in the following amounts:

Minimum limits:

Bodily Injury -	\$1,000,000.00 each accident
Property Damage -	\$1,000,000.00 each accident
or a combined single limit of	\$1,000,000.00

- .5 **Conditions of Coverage** Bodily Injury and Property Damage coverage under both General and Automobile Insurance shall include the "occurrence" basis wording. In the event of cancellation of insurance, the Owner shall be given advance notice of 30 days by the insured carrier and such to stipulated in the insurance contract.

- .6 **Umbrella Liability.** Limit: **\$5,000,000.00** per occurrence and aggregate excess over Underlying Comprehensive General Liability, Automobile Liability, Employers Liability Policies.

- .7 **Self-Insured retention** \$10,000.00 per occurrence.

- .8 **Owner Contractor Protective Liability Insurance (OCP):** If the Contract amount is greater than **\$250,000** the Contractor shall purchase and maintain an Owner's Protective Liability policy naming the Owner, Owner's Representative, Construction Manager and Fuller & D'Angelo, P.C. as named insured. The original and duplicate policy shall be filed with Owner and the policy shall remain in effect until the job is formally accepted by the Owner.

Limits of Liability:	\$1,000,000.00 each occurrence.
	\$2,000,000.00 aggregate

- .9 **Asbestos/Lead/Hazardous Materials Liability Insurance :** With coverage for the services rendered for the district, including, but not limited to removal, replacement enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs in addition to Insurance specified, The Contractor shall provide the following liability insurance:

Workman's Compensation: State: Statutory

Applicable Federal: (e.g., Longshoremen, harbor work, Work at or outside U.S. Boundaries): Statutory

Employer's Liability: \$100,000

Said policy shall be endorsed to indicate that the term "Insured" shall include the "Owner" Owner's Representative, and Fuller & D'Angelo, P.C. Architects & Planners and be deemed to include their authorities, boards, bureaus, departments and officers thereof in their official capacities.

Said policy shall be endorsed to indicate that the contractor is solely responsible for the premium cost of the policy including any audit adjustments.

Said policy shall contain a 30-day notice of cancellation clause with said notice to be sent to the Owner, Owner's Representative, and Fuller & D'Angelo, P.C. Architects & Planners by certified mail.

Minimum limits:

\$2,000,000 per occurrence/\$3,000,000, including products and completed operations. If a retroactive date is used, it must pre-date the inception of the contract

If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948) as well as proof of MCS 90:

- .10 Builders Risk:** Unless otherwise provided for hereunder, the Contractor shall purchase and maintain throughout the course of the entire contract, and until final acceptance, a Builders Risk Policy providing a Builder's Risk Coverage Form or Builder's Risk Renovation Form in an amount equal to 100% of the construction replacement cost.
- The coverage format shall be the "Special Coverage" form (all risk) naming the Owner, the Contractor and all sub-contractors and suppliers as their interest appear. Loss, if any, shall be payable to the Owner as trustee for all interests. Contractor shall be solely responsible for the cost of any deductible.
- .11 Flood and Earthquake Coverage:** The Contractor, prior to commencing any work on the project, shall ascertain whether the site is subject to the perils of Flood, Mudslide and/or earthquake. If the exposure is present, the Contractor, at his sole cost expense, shall purchase and maintain coverage for the duration of the contract.
- The Contractor, prior to signing of the contract, shall provide the Owner and Fuller & D'Angelo, P.C. Architects & Planners with a written report and notice from a P.E. as to the Flood and Earthquake exposures at the site and indicate what coverage, if any is to be provided.
- .12 Equipment, Tools and Supplies:** By signing this contract, the Contractor agrees and understands that he is solely responsible for all loss to any tools, equipment or supplies, owned, rented, or leased, stored at or off the site. Further, the Contractor certifies that he has provided, or will provide notice to this effect to all sub-contractors and suppliers.

*(Paragraph deleted)*

**§11.1.5 Subcontractors Insurance:** The Contractor agrees to provide all sub-contractors with a copy of these insurance requirements and further, agrees to require all subcontractors, manufacturers and suppliers to provide evidence of insurance of the same coverage and limits as are required from the Contractor pursuant to Section 11.1.4.

*(Paragraph deleted)*

**§11.1.6** The Contractor shall maintain a separate record of each subcontractors' insurance certificates and said records shall be available for inspection by the Owner, Owner's Representative and Fuller & D'Angelo, P.C. Architects and Planners for a period of 2 years from the date of final acceptance.

*(Paragraph deleted)*

**§11.1.7** The Contractor shall not permit any subcontractors on the site until acceptable certificates of insurance have been filed and approved.

**§11.1.8 Waiver of Subrogation:** All property insurance policies carried by the Contractor and his subcontractors shall contain a "Waiver of Subrogation" clause (including equipment floaters) to the effect that the Contractor agrees to waive all rights of subrogation against the Owner, Owner's Representative and Fuller & D'Angelo, P.C. Architects & Planners.

**§11.1.9** The signing of this contract acknowledges that the Contractors have notified their insurance carriers accordingly.

**§11.1.10 Renewal Certificates of Insurance:** Renewal Certificates of Insurance must be filed with the Owner, Owner's Representative, Construction Manager and Fuller & D'Angelo, P.C. Architects & Planners at least 30 days prior to the expiration of any policy

**§11.1.11 Job Safety:** The Contractor shall assign one person from his staff to be on the job site safety coordinator. The Contractor is solely responsible for overall job site safety, the safety of his employees and the conduct of his work and that of his subcontractors.

**§11.1.11.1** The Contractor agrees to cooperate and comply in full with the insurance representatives of the Owner, Owner's Representative, Construction Manager and Fuller & D'Angelo, P.C. with respect to any safety recommendations or requirements.

**§11.1.11.2** The Contractor affirms he is fully versed in all State, Federal and local regulations pertaining to safety including OSHA and Department of Labor regulations, pertaining to his trade and construction operations.

**§11.1.12 Products, Completed Operations:** The contractor is required to, and agrees to carry Products and Completed Operations coverage.



**§11.1.13** Certificates of Insurance shall be filed to this effect, annually with the Owner, Owner's Representative, Construction Manager and Fuller & D'Angelo, P.C. and the Contractor shall obtain and record like certificates from his sub- contractors

**§11.1.14** Insurance Carriers: All insurance carriers providing coverage on the project must be **licensed** to do business in the State in which the project is located, and in the State in which the Contractor is domicile. The companies must be Best "Secured" rated or better. This requirement applies to all sub-contractors as well.

**11.1.15** If at any time, any policy required herein shall be or become unsatisfactory to the Owner, as to form or substance, or if the issuing company shall be or become unsatisfactory, the Contractor, upon written notice from the Owner, shall promptly replace said unsatisfactory insurance.

**§11.1.16** Failure to provide, maintain or deliver satisfactory insurance during the course of this project, at the election of the Owner, the contract may be declared suspended, discontinued, or terminated.

**§11.1.17** Failure to provide and maintain proper insurance under this contract shall not relieve, nor be construed to conflict with or otherwise limit the contractual obligations of the Contractor

**§11.1.18** In the event that any claims, or claims aggregate be in excess of the insured amounts, filed by reasons of any operations under this contract, the Owner, at its sole opinion, may withhold from payments due or to become due the Contractor amounts equal to the excess of such claims, until the Contractor has provided evidence of additional financial security covering such claims, in a form satisfactory to the Owner.

**§11.1.19** All the policies of insurance referred to in this Article 11 shall be issued in the names of the Owners, the Architect, the General Contractor, and his sub-contractor's. Said policy shall be endorsed to indicate that the term "Insured" shall include the "Owner" Owner's Representative, Construction Manager and Fuller & D'Angelo, P.C. Architects & Planners and be deemed to include their authorities, boards, bureaus, departments and officers thereof in their official capacities. In all cases regarding insurance referred to in these specifications, certificates shall be provided to the Owners, Owner's Representative Manager and Architects & Engineers

**§ 11.1.20** 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. Refer to Section 00 6000 Bonds and Certificates.

**11.1.21** 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.

**§ 11.1.22 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 be responsible for purchasing and maintaining the Owner's usual liability insurance.

*(Paragraphs deleted)*

## **§ 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 proceeds 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. 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.

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