

RIDER "D"
INSURANCE REQUIREMENTS
FOR OWNER/CONSTRUCTION MANAGER AGREEMENT BETWEEN
THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
AND
[INSERT NAME OF CONSTRUCTION MANAGER]

Construction Manager shall procure and maintain, at its own expense, liability insurance for damages of the kinds and in the amounts provided in this Rider D, from insurance companies licensed, admitted, or approved to do business in the State of New Jersey. Construction Manager shall obtain this coverage from A- VII or better rated companies as determined by A.M. Best Company. All liability insurance policies shall afford coverage on an occurrence rather than claims made basis, unless otherwise note below.

If Construction Manager maintains broader coverage or higher limits (or both) than the minimum requirements of this Rider D, New Jersey Economic Development Authority requires and shall be entitled to the broader coverage or higher limits (or both) maintained by Construction Manager. All available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to all entities included as additional insureds.

It is acceptable to the New Jersey Economic Development Authority and the State of New Jersey that a Contractor Controlled Insurance Program be in place to meet the insurance obligations of this project and provide coverage for Construction Manager and all subcontractors and subordinate subcontractors for work performed on-site. If the project is to be covered by a Contractor Controlled Insurance Program, New Jersey Economic Development Authority reserves the right to require higher limits than those in this Rider "D".

In this Rider D, "**Required Additional Insureds**" means the New Jersey Economic Development Authority, the State of New Jersey, and any other entities that are required to be additional insured pursuant to any agreements regarding ownership or tenancy interest in site in which NJEDA is a party.

The types and minimum amounts of insurance required are as follows:

WORKERS' COMPENSATION

New Jersey Statutory Coverage and Employers' Liability Insurance. Employer's Liability with limits of no less than \$1,000,000 each accident, \$1,000,000 Disease - Each Employee and \$1,000,000 Disease — Policy Limit.

Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall include an endorsement to extend coverage to any State which may be interpreted to have legal jurisdiction.

COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability (CGL) with limits of not less than \$5,000,000 each occurrence, \$5,000,000 aggregate covering liability based on property damage, death and bodily injury. If such CGL insurance contains a general aggregate limit, it shall apply on a per project basis.

Such insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract. This insurance must include Construction Manager's Independent (Contingent) Liability Coverage, Broad Form Property Damage, and Personal Injury Coverage, without an employee exclusion.

The Required Additional Insureds shall be included as insured(s) under the CGL/MGL, using ISO additional insured endorsement CG 20 10 11/85 (or a substitute form providing equivalent coverage). This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Additional Insureds.

COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

Commercial Automobile Liability covering all owned, hired and non-owned automobiles. Minimum policy limit of \$1,000,000 Combined Single Limit. The Required Additional Insureds shall be included as additional insureds under the policy using ISO additional insured endorsement CA 20 48 (or a substitute form providing similar coverage), and under the excess liability policy, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Additional Insureds.

UMBRELLA/EXCESS LIABILITY

Umbrella/Excess Liability providing limits in addition to, and following-form, Employers' Liability, Commercial General Liability, and Automobile Liability. Limits of no less than \$25,000,000 each occurrence and in the aggregate. If such insurance contains a general aggregate limit, it shall apply separately on a per project basis.

CONTRACTOR'S POLLUTION LIABILITY

Contractor's Pollution Liability as a result of all construction operations at the project site, while in transit or at non-owned disposal sites, including coverage for mold/fungus, with minimum policy limits of \$5,000,000 each claim and in aggregate. Additionally, the deductible and/or retention shall be in an amount acceptable to NJEDA and shall be indicated on the Certificate of Insurance. Such policy form shall be approved by NJEDA. The Required Additional Insured shall be included as additional insureds. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Additional Insureds. Coverage may be provided on a claims-made basis as long as the retroactive date is prior to commencement of work at the site (must be indicated on certificate of insurance) and continuous coverage is maintained or an extended discovery period exercised for a period of five (5) years beginning from the time the policy is terminated. Coverage may be provided on a combined form with Professional/Errors & Omissions Liability with a combined policy as long as the shared aggregate is no less than \$5,000,000.

PROFESSIONAL LIABILITY

Professional Liability/Errors & Omissions Liability sufficient to protect Construction Manager from any liability arising out of professional obligations performed pursuant to this contract with limits of not less than \$5,000,000 each claim and in aggregate for all operations conducted. Additionally, the deductible and/or retention shall be in an amount acceptable to NJEDA and shall be indicated on the Certificate of Insurance. Such policy form shall be approved by NJEDA. Coverage may be provided on a claims-made basis as long as the retroactive date is prior to commencement of work at the site (must be indicated on certificate of insurance) and continuous coverage is maintained or an extended discovery period exercised for a period of five (5) years beginning from the time the policy is terminated. Coverage may be provided on a combined form with Pollution Liability with a combined policy as long as the shared aggregate is no less than \$5,000,000.

WAIVER OF RIGHTS

To the extent allowable by law, Construction Manager waives all rights against the Required Additional Insureds and their respective agents for recovery of damages to the extent these damages are covered by the policies listed above to be maintained by Construction Manager, except under the Professional Liability policy.

If the policies of insurance purchased by Construction Manager as required above do not expressly allow the insured to waive rights of subrogation prior to loss, Construction Manager shall cause them to be endorsed with a waiver of subrogation as required above.

CONTRACTORS EQUIPMENT/INSTALLATION FLOATER INSURANCE

Construction Manager, subcontractors and subordinate subcontractors shall have the sole responsibility for maintaining insurance coverage for all tools, equipment and materials awaiting installation on site, in transit or while at a temporary location, unless specifically confirmed by NJEDA as being covered by builders' risk. NJEDA and the State of New Jersey shall not be liable for loss or damage thereto.

Any insurance policy covering the machinery and equipment of Construction Manager, subcontractors and subordinate subcontractors against loss by any cause shall include an endorsement providing that the underwriters waive their right of subrogation against the owner, the architect and/or engineer, Construction Manager and all subcontractors and subordinate subcontractors.

CERTIFICATES AND PROOF OF COVERAGE

Prior to the commencement of the Preconstruction Phase services, Construction Manager shall furnish to Owner a Certificate of Insurance, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. Such certificates are subject to the Owner's final approval. A copy of the additional insured, primary/non-contributory and waiver of subrogation endorsements shall accompany the certificates of insurance.

All policies and corresponding certificates (or copy of policy endorsements) must show thirty (30) days prior written notice of non-renewal or cancellation (ten (10) days prior written notice for non-payment cancellation) to NJEDA. If the insurance policies cannot be endorsed to provide notice of reduction or cancellation to third parties, then Construction Manager shall provide notice of any reduction or cancellation to the Owner within forty-eight (48) hours of receipt of notification from the insurance

company. Construction Manager shall notify the Owner, in writing, within forty-eight (48) hours, of any changes made to any insurance policy, which affect NJEDA and the State of New Jersey. Failure of NJEDA to demand such certificate or other evidence of full compliance with these insurance requirements or failure to identify a deficiency from evidence that is provided shall not be construed as a waiver of Construction Manager's obligation to maintain such insurance.

Construction Manager shall provide certified copies of all insurance policies required within ten (10) days of NJEDA's written request for such policies.

Failure to maintain the required insurance may result in termination of this contract at NJEDA's option.

If Construction Manager fails to maintain or fails to provide copies of the insurance as set forth herein, NJEDA shall have the right, but not the obligation, to purchase said insurance at Construction Manager's expense, and in connection therewith, including without limitation, NJEDA's reasonable attorneys' fees, on demand.

By requiring insurance herein, NJEDA does not represent that coverage and limits will necessarily be adequate to protect Construction Manager, and such coverage and limits shall not be deemed as a limitation on Construction Manager's liability under the indemnities granted to NJEDA in this Agreement.

SUBCONTRACTORS

Construction Manager will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors will be subject to the requirements stated herein, with limits deemed appropriate by Construction Manager for the work being performed, except with respect to Professional Liability/Errors & Omissions Liability insurance which may be limited to the Construction Manager.