



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

Edgemont Union Free School District  
HVAC Upgrades and Related Work  
High School Resource Building

### THE OWNER:

Edgemont School District  
300 White Oak Lane  
Scarsdale NY, 10583

### THE ARCHITECT:

Fuller and D'Angelo, P.C.  
Architects and Planners  
45 Knollwood Road – Suite 401  
Elmsford, NY 10523

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### ADDITIONS AND DELETIONS:

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

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

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

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User Notes:

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*(Paragraphs deleted)*

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all of the Contractor's responsibilities as to all labor, parts, supplies, equipment, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items of cost or value needed to produce, construct, and fully complete the Contractor's Work identified by the Contract Documents.

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective

professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

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

#### **§ 1.1.9 Miscellaneous Definitions**

**§ 1.1.9.1** The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising care, skill, and diligence required of the Contractor by the Contract Documents.

**§ 1.1.9.2** The term "any" in the Contract Documents shall be interpreted as "any and all" whenever one or more than one item would be applicable for completion of the Work.

**§ 1.1.9.3** Except as otherwise explicitly provided, the words "approved" or "approval" shall mean the written approval of the Architect or Construction Manager.

**§ 1.1.9.4** The term "as indicated" or "as shown" shall mean "as indicated in the Contract Documents."

**§ 1.1.9.5** The term "include" in any form other than "inclusive" is non-limiting and not intended to mean "all inclusive."

**§ 1.1.9.6** The terms "furnish" and "furnish all materials," unless specifically noted otherwise, mean "pay for, supply and deliver to the job site all materials, systems, equipment, product, and/or other items so specified."

**§ 1.1.9.7** The terms "install" and "furnish all labor," unless specifically noted otherwise, mean "pay for, perform all operations connected with installation of Work including unloading product to be installed, supplying all necessary equipment and rigs to do the Work, test, place in operation and service, and remove all packing material."

**§ 1.1.9.8** The term "product" includes materials, systems, equipment, and other items to be incorporated into the Work.

**§ 1.1.9.9** The term "provide," unless specifically noted otherwise, means "furnish, install, connect up, complete, test and place in operation and service."

**§ 1.1.9.10** The term "replace" or similar term shall mean remove designated, damaged, rejected, defective, unacceptable, or nonconforming Work from the Project and provide new work meeting the requirements of the Contract Documents in place thereof.

**§ 1.1.9.11** The Contract Time is the period of time specified in Article 3 of the Agreement for completion of the Work.

**§ 1.1.9.12** The terms "manufacturer" or "supplier" mean any person or entity which contracts to furnish materials to a Contractor, Subcontractor, or any Sub-subcontractor for use at the site of the Project.

**§ 1.1.9.13** Terms not otherwise defined herein shall have the meanings set forth elsewhere in the Contract Documents.

#### **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. It is intended that all plumbing, mechanical, electrical, and other systems will be complete and in proper operation, and that

all construction components, whether part of such systems or otherwise, will be complete and in compliance with accepted construction practice upon completion of the Work. Even if items are missing from the Drawings or Specifications, but are normally required for proper operation of plumbing, mechanical, electrical, and other systems, or to complete otherwise incomplete construction, or to meet governing code requirements, they shall be included by the Contractor, unless he sought and received contradictory interpretation or clarification from the Architect.

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

§ 1.2.1.2 The Contractor and its Subcontractors shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation (1) location, layout, and nature of the Project site and surrounding areas, (2) existing building and site conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools, equipment, (5) Owner occupancy requirements and constraints, (6) site safety logistics plan and any phased construction plan and (7) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 1.2.1.2.

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

§ 1.2.2.1 The Work on the Project will be separated into individual and separate contracts. It is the intent of these requirements to include all items of Work for a complete Project in the separate contracts. The Contractor shall be responsible for understanding and knowing under which contract each item of Work is included.

§ 1.2.2.2 Each section or division of the Specifications has been assigned to one of the contract scopes. Where a section of the Specification is referenced in the contract scope, then any and all items necessary for the proper and normal installation of the item referenced in the Specification section shall be included whether specifically indicated in the Contract Documents or not.

§ 1.2.2.3 The reference of the "Specifications" regarding the division or separation of the work among types of trades or occupations is only for the suggested purpose of coordinating the work of the different trades, etc. but it shall be the Contractor's entire responsibility for the proper coordination and completion of all the Work described in the "Specifications" whether performed by the Contractor or its Subcontractors, if any. It shall be the Contractor's responsibility to settle definitely with each of its Subcontractors the portions of the Work, which each will be required to do and the Owner and Architect assume no responsibility whatever for any jurisdiction claimed by any of the trades involved in the Work. The Contractor shall provide each item listed, of quality noted and subject to the qualifications noted, and shall perform operations prescribed according to the conditions stated, including specified operations, processes or methods, furnishing all necessary labor, materials, equipment and incidentals required to complete the Work.

§ 1.2.2.4 The Contractor acknowledges that the coordination requirements and the construction schedule of this Project will require close cooperation and coordination between all Contractors on the Project site

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

§ 1.2.4 In the event of conflict, ambiguity and/or unclear circumstances between any of the requirements of the Contract Documents, the requirement that is most inclusive of the highest quality and/or of the highest cost shall govern. The Contractor herewith agrees that no extra compensation shall be awarded to it, since it herewith received specific instructions to the procedure and values of the Work.

§ 1.2.5 In the event of inconsistencies or discrepancies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better

quality or greater quantity of work or (2) comply with the more stringent requirements; either or both in accordance with the Architect's interpretation. Where the Contractor perceives a conflict, it shall inform the Architect and Owner thereof and request a decision from the Architect, which shall be promptly communicated by the Architect to the Contractor so as not to cause any delay in the performance of the Work. Any Work performed after perceiving the conflict and prior to resolution by the Architect shall be at the Contractor's risk. The terms and provisions of this Paragraph, however, shall not relieve the Contractor of any of the obligations set forth elsewhere herein.

- .1 The Contractor shall not scale Drawings. Dimensions on large scale drawings take precedence over dimensions on small scale drawings. The Contractor shall notify the Architect if additional dimensions are needed. The Contractor shall field verify all dimensions.
- .2 Before ordering any materials or doing any work, the Contractor and each Subcontractor shall verify measurements at the Project Site and shall be responsible for the correctness of such measurements. The Contractor shall confirm all dimensions by field measuring. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference that may be found shall be submitted to the Architect for resolution before proceeding with the Work.
- .3 If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for the approval by the Architect before making the change.
- .4 Certain portions of the Specifications are written in condensed outline form and omitted words are to be supplied by inference. Naming of an article or operations shall have the effect of stating "Contractor shall furnish, install and complete" said operation or article unless it is further qualified in the context in which it appears.
- .5 When reference is made to specifications of a manufacturer, trade association, governmental agency, reference standard or similar source (such as ASTM, ASA, AISC, ACI, etc.), such is made part of the Drawings and Specifications, having the force and effect as though reproduced therein, and upon entering into the Contract the Contractor acknowledges its familiarity with those pertaining to its Work. Furthermore, all Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others. All Work shall conform to the National Electric Code, New York State Uniform Fire Prevention and Building Code, and amendments thereto, New York State Energy Conservation Construction Code, State Education Department Manual of Planning Standards, New York State Department of Transportation, Office of Engineering, Standard Specification, Construction and Materials, latest edition, Life Safety Code – NFPA, and applicable City and State Building Codes and Authorities having jurisdiction. The date of the reference standard shall be the latest edition at the time of signing the Contract except as specifically indicated otherwise.
- .6 The Contract Drawings are intended to show the general arrangement, design, and extent of the Work and are partly diagrammatic. They are not intended to be scaled for any purpose, or to serve as shop drawings. The Contractor and its Subcontractors will cooperate with all other contractors and their respective subcontractors in determining the construction of systems, running of pipe, and locating equipment. The Contractor agrees that the failure to repeat typical details, figures, or notes on all Contract Drawings or other Contract Documents will not be a basis for claims for additional cost or time.
- .7 Any necessary variations in routing or installation shall be made to conform to the intent of the Contract Documents without additional costs. Where there are intersections or obstructions involving ducts, piping, or any other equipment requiring offset of materials, the Contractor acknowledges that it gave particular consideration to clearances in advance of submitting its bid, and that no additional costs for these issues will be considered by the Owner.
- .8 If conflicting conditions or interferences develop, the Contractor and its Subcontractors will confer with the other contractors and their respective subcontractors whose work is affected to determine a solution acceptable to all interested parties. The suggested solution shall be submitted to the Architect for comment and, if necessary, written approval.
- .9 The Contract Documents intend a first class finished product of such character and quality as described in and reasonably inferred from the Contract Documents. The Contractor will perform its Work to be complete and operable, fitting with the work of other contractors and the Owner, and in compliance with best construction practices and the ordinances, codes, and regulations of all bodies or persons having governmental or regulatory authority over the Contractor and its Work.

**§ 1.2.6** Execution of the Contract by the Contractor is a representation that the Contractor has carefully examined the Contract Documents and the Project site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the Project site, the specific conditions under which the Work is to be performed, the areas of the Work which will cause a disruption to the necessary and proper operation of the facilities by the Owner, and all matters which may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all conditions and the Contract Documents will not be permitted.

**§ 1.2.7.1** The Contractor certifies that it is experienced and familiar with the requirements and conditions imposed during the construction of similar work in the area. This includes, but is not limited to, "out of sequence" or "come back" work for the removal of plant, equipment, temporary wiring or plumbing, etc. This "out of sequence" work may also include phasing of construction activities to accommodate the installation of the Work at various locations and orderly fashion and the completion of Work at various locations and/or levels at various times. This "phasing," "out of sequence," or "come back" work shall be done at no cost to other contractors, the Owner or Architect.

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

### **§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

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

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

### **§ 1.6 Notice**

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

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

### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will establish the protocols for the development, use, transmission, and exchange of digital data. Neither the Owner, Architects or its agents are obligated to provide any available digital data or information to the contractor.

## § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Refer to Section 01 4216 for additional definitions.

*(Paragraphs deleted)*

### § 2.2 Information and Services Required of the Owner

§ 2.2.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for **the building permit**, necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. All other permits required from local agencies required for construction shall be paid for by the Contractor.

*(Paragraphs deleted)*

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. Refer to Section 01 4216 for additional definitions.

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

§ 2.3.4 The Owner shall furnish surveys, if available, describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

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

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

### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents as determined by the Construction Manager or Architect, or (3) fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or (4) fails to remove and discharge (within seven (7) days) any lien filed upon Owner's property by anyone claiming by, through, or under the Contractor, or (5) fails to perform the Work in a safe manner and in compliance with all applicable health and safety requirements and the Contractor's site specific health and safety plan, or (6) disregards the instructions of the Architect or Construction Manager, as determined by the Construction Manager or Architect, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to

the extent required by Section 6.1.3. Such order or stoppage by the Owner shall not constitute grounds for termination by the Contractor under Article 14 and shall not be a basis for an extension of the Contract Time under Section 8.3 or Article 15.

#### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects or fails to continuously and diligently to carry out the Work in accordance with the Contract Documents or in accordance with the Project schedule and fails within a five-day period after receipt of notice from the Owner to commence and continue correction of any such default, failure or neglect with diligence and promptness, the Owner may, after such three (3) work day period, without prejudice to other remedies the Owner may have, correct such deficiencies or defaults either with the Owner's own forces or by hiring another contractor to perform the Work that the Contractor is failing or neglecting to carry out. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, and defaults, including the Owner's expenses and compensation for the Architect's additional services and other expenses made necessary by such default, neglect, or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior consultation with the Architect, and shall be equally binding upon the Contractor's performance and payment bond surety. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**§ 2.5.1** Where the Contractor's default and/or neglect to carry out its Work in accordance with the Contract Documents threatens the health, safety and/or welfare of the occupants of the Owner's facilities and/or threatens the structural integrity and/or preservation of the Owner's facilities, the Owner may proceed to carry out the Contractor's Work upon twenty-four (24) hours' notice of its intention to do so to the Contractor. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies and defaults, including the Owner's expenses and compensation for the Architect's and its respective consultants' additional services and other expenses made necessary by such default, neglect or failure.

#### **§ 2.6 Extent of Owner's Rights**

**§ 2.6.1** The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

**§ 2.6.2** In no event shall the Owner, Construction manager or Architect have any responsibility for the Contractor's construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work notwithstanding any of the rights and authority granted the Owner in the Contract Documents

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

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

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

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.1.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.3 and shall promptly report in writing to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or the Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor knew or reasonably should have known of such error, inconsistency or omission and failed to report it as required by this Section to the Architect. If the Contractor performs any construction activity knowing it involves, or reasonably should have known it involves, a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear sole responsibility for the costs for correction.

§ 3.2.1.2 The obligations of the Contractor under Section 3.2.1.1 and this Section 3.2.1.2 are for the purpose of facilitating construction by the Contractor and are not for the purpose of imposing an affirmative obligation on the Contractor to discover errors, omissions, or inconsistencies in the design information in the Contract Documents. The Contractor's review of the Contract Documents is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically so provided in the Contract Documents.

§ 3.2.1.3 Failure by the Contractor to promptly report any errors, inconsistencies, or omissions in the Contract Documents discovered by the Contractor, or which the Contractor reasonably should have known or discovered, shall constitute a waiver by the Contractor of any claim that otherwise might result in a change in the Contract Sum or Contract Time.

§ 3.2.1.4 The representations of the Contractor as set forth in these General Conditions shall survive expiration and/or termination of the Agreement.

§ 3.2.2 The Contractor shall be presumed to have performed a detailed investigation of the Project site(s) to consider fully all conditions that may have a bearing on the Work and to have accounted for these conditions in its proposal. The Contractor is deemed to be a qualified expert in the systems and construction requirements of the Work of its Contract. The Contractor hereby specifically acknowledges and declares that the Contract Documents are full and complete, are sufficient to have enabled it to determine the cost of the Work, and that the Drawings, the Specifications, and all Addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, building codes, and regulations, and otherwise to fulfill all of its obligations under the Contract Documents. The Contractor shall take field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported in writing to the Architect at once. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner. Except as to any reported errors, inconsistencies or omissions, and except as to concealed or unknown conditions, by executing the Agreement, the Contractor represents the following to the Owner and the Architect:

- .1 The Contract Documents are sufficiently complete and detailed for the Contractor to perform the Work required and to comply with all the requirements of the Contract Documents.
- .2 The Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedure and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to Work; (3) the requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work.

§ 3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.12.

§ 3.2.4 The Contractor may submit Requests for Information ("RFI") to the Architect to help facilitate the Contractor's performance of the Work. Prior to submitting each RFI, the Contractor shall first carefully study and compare the

Contract Documents, field conditions, other Owner-provided information, Contractor-prepared Coordination Drawings, and prior Project correspondence and documentation to determine that the information to be requested is not reasonably obtainable from such sources. The Contractor shall submit each RFI sufficiently in advance of the date by which such information is required in order to allow the Architect sufficient time to permit adequate review and response and to permit Contractor compliance with the latest construction schedule. The Contractor shall reimburse the Owner amounts charged by the Architect for RFI responses that in the opinion of the Architect were available from a careful review of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared Coordination Drawings, and prior Project correspondence and documentation.

**§ 3.2.4.1** RFIs are for requests on clarifications or questions on contract drawings and specifications, not contract terms, scheduling items, or general correspondence, nor, as a means to describe or request approval of alternate construction means, methods or concepts or substitution of materials, systems means and methods. The Contractor shall fill all RFIs out in accordance with the provisions of the Project Manual. The Architect shall not fill said forms out on the Contractor's behalf.

**§ 3.2.5** If the Contractor, during the progress of the Work, discovers any discrepancies between the Drawings and the Specifications, errors and/or omissions on the Drawings, or any discrepancies between physical condition of the Work and the Drawings, it shall immediately notify the Architect in writing who shall promptly adjust same. Whether or not an error is believed to exist, deviations from the Drawings and dimensions given thereon shall be made only after approval in writing is obtained from the Architect. Any work performed after such discovery without the approval of the Architect shall be at the Contractor's risk and expense

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

**§ 3.2.7** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1, 3.2.2, 3.2.4, 3.2.5 or 3.2.6, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.1, 3.2.2, 3.2.4, 3.2.5 or 3.2.6, the Contractor shall pay such costs and damages to the Owner, including architect's, engineer's and attorney's fees, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

**§ 3.2.5** Except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions defined in Paragraph 3.2.4, by executing the Agreement, the Contractor represents the following:

**§ 3.2.5.1** The Contract Documents are sufficiently complete and detailed for the Contractor to (1) perform the work required to produce the results intended by the Contract Documents and (2) comply with all the requirements of the Contract Documents, within the time permitted for the completion of the work.

**§ 3.2.5.2** The Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform the work, use of materials, selection of equipment and requirements of product manufacturers will be consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to Work; (3) requirements of any warranties applicable to the work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the work.

**§ 3.2.6 Building-In:** Contractor(s) and sub-contractors shall note the parts and materials which must be built in as the work progresses, including but not limited to all templates, forms, sleeves, inserts, parts, blocks, anchors, etc. for all

work throughout and shall furnish to or set for the Contractor for General Construction in time to prevent delay in the work. Contractors shall also comply with Section 01 7310 or Section 01 7000 Cutting and Patching.

### § 3.3 Supervision and Construction Procedures

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

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

§ 3.3.3 The Contractor shall be responsible for coordinating the work of its own forces and the work of Subcontractors engaged by it to perform the Work of the Project on its behalf. The Contractor shall supply to its own work forces, and Subcontractors engaged by it to perform portions of its Work, copies of the Drawings and Project Manuals for the work to be performed by such individuals/entities on its behalf. The Contractor shall be responsible to the Owner for the acts and/or omissions of the Contractor's employees, the Contractor's Subcontractors, the Contractor's material suppliers, and/or their respective agents and employees, and any other persons performing portions of the Work on behalf of the Contractor.

§ 3.3.3.1 The Contractor's obligations under the Contract Documents shall include, without limitation, the following:

- .1 Review of all specified construction and installation procedures with its employees and/or Subcontractors, including, without limitation, those recommended by manufacturers, prior to the commencement of the relevant portion of the Work to be performed.
- .2 Advising the Architect:
  - .1 if a specified procedure deviates from best construction practice;
  - .2 if following a procedure will affect any warranties, including the Contractor's general warranty; or
  - .3 of any objections the Contractor may have to a procedure.
- .3 Proposing alternative procedures, as appropriate, which procedures shall be covered by the Contractor's warranty as described in Section 3.5 hereof.
- .4 The Contractor shall be responsible for organizing and conducting pre-installation conferences and must coordinate such conferences with the Architect.

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

§ 3.3.5 The Contractor shall inspect all materials as delivered to the Project site and shall reject any materials that will not conform with the requirements of the Contract Documents when properly installed.

§ 3.3.6 The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body having jurisdiction over the Project. Failure to obtain any permits, licenses or other approvals because of the failure of the Contractor to conform to this requirement shall not extend the Contract time, and the Contractor shall not be entitled to any increase in the Contract Sum therefore. In addition, any additional costs and/or expenses of any nature incurred by the Owner as a result of the Contractor's failure to conform to this requirement shall constitute a charge against the Contractor's Contract.

**§ 3.3.7 Shut Downs:** Such work as connections to existing sewers, plumbing, heating, and electrical systems shall be coordinated at a time agreeable to the Owner and the Architect, and shall be determined and agreed to well in advance of the actual performance of such work so as to interfere as little as possible with the operation and use of the Owner's existing facilities. Shut downs must be coordinated through the Owner or Architect. The continued uninterrupted operation of all facilities of the Owner's buildings is essential. If any existing facilities must be interrupted, the Contractor for the Work shall provide all necessary temporary facilities and connections necessary for maintaining these existing facilities at no increase in the Contract Sum except as otherwise specified. No mechanical, heating, plumbing, sprinkler, or electric service shall be interrupted at any time except as approved in advance by the Owner or when the buildings are not occupied and shall be coordinated with the Owner, as well as the Architect. All communication systems must be maintained without interruption. As much related work as possible shall be performed prior to shut downs, so as to minimize the period of shut down. All material, equipment, and manpower necessary in the performance of a shut down shall be on site prior to interruption of service.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and timely pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Contractor is solely responsible for managing labor and labor relations, including labor disputes or concerted activity, direct or indirect, without any delays or interference with the work schedule and/or other contractors at the site. No delay in the performance of the Work shall be excused by reason of labor problems affecting the Contractor or any subcontractor. In the event of strikes or labor disputes by other separate prime contractors, or other contractors performing work for the Owner under other Contracts, each contractor shall continue with its work and provide all necessary manpower as required to maintain the schedule and completion dates of the project.

**§ 3.4.1.1** A shortage of labor in the industry shall not be accepted as an excuse for not properly manning the Project at each site.

**§ 3.4.1.2** The Contractor shall be responsible for the care and protection of all equipment and materials for its Work on the Project.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Any request by the Contractor to make modifications to the work or substitutions shall not in any way cause or result in the delay of the ordering of any materials or equipment or the scheduling of the Work. Any such request shall require a minimum of thirty days' notice to the Owner and Architect and shall include full documentation of all costs and the time necessary. The full cost of any request by the Contractor for a modification or substitution, including but not limited to the cost of fees for the review of such request by the Owner and Architect or legal counsel and any delay time, shall be borne by the Contractor. Refer to Section 01 2500 Substitution Procedures

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Should any disorderly, incompetent, or objectionable person be hired or employed by a Contractor, upon or about the premises of the Owner, for any purpose or in any capacity, he shall upon the request of the Architect, be discharged from the work, and not again be employed thereon without the written permission of the Architect.

**§ 3.4.4** The Contractor warrants that it has good title to all materials used by it in, on or in connection with the Work. No materials or supplies shall be purchased by the Contractor or any of its Subcontractors that are subject to any chattel mortgage, conditional sale or other agreement by which an interest is retained by the seller.

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

§ 3.4.6 All mechanics employed on the Project shall be persons skilled in that work which they are to perform. Work will not be approved if it does not meet the quality of workmanship as called for in the Contract Documents. If this quality of workmanship is not exactly defined herein, it shall be assumed to be the best standards of workmanship for the trade.

§ 3.4.7 The Contractor shall only employ labor on the Project or in connection with its Work capable of working harmoniously with all trades, crafts and other individuals associated with the capital improvement work to be performed. The Contractor shall make every reasonable effort to avoid labor disputes and to insulate the Owner and Architect from the effects of labor disputes should any arise. There shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity at the Project for any reason by anyone employed or engaged by the Contractor to perform its portion of the Work. There shall be no lockout at the Project by the Contractor. The Contractor shall be responsible for providing the manpower required to proceed with the Work under any circumstance. For the purposes of this Section, every reasonable effort shall include, but not necessarily be limited to:

- .1 make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Architect or the Owner, any conflict between its Agreement with the Owner and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade;
- .2 requiring employees, Subcontractors, suppliers and others to use reserve gates which shall be established for the Project;
- .3 rearranging work schedules for the Contractor's Work or the work of its Subcontractors; and
- .4 including in Contractor's agreements with its Subcontractors the right to fully implement all provisions of this Section.

§ 3.4.7.1 In case the progress of the Work is effected by any undue delay in furnishing or installing any items or materials or equipment required pursuant to the Contract because of a conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive but in no case shall the amount of such change be charged by the Contractor to the Owner as an additional cost to perform the Work.

§ 3.4.7.2 The Contractor shall ensure that its Work continues uninterrupted during the pendency of a labor dispute.

§ 3.4.7.3 The Contractor shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes or strikes.

§ 3.4.8 The Contractor and its Subcontractors employed upon the Work will be required to conform with all labor laws and to all other laws, ordinances, and legal requirements now or hereafter applicable to the Work and/or the construction area.

§ 3.4.9 Employees of the Contractor or its Subcontractors whose work is unsatisfactory to the Owner or the Architect, or considered by them to be unskilled or otherwise objectionable, will be immediately dismissed from the Project upon notice from the Owner or the Architect. Those dismissed employees shall be immediately replaced by the Contractor so as not to delay progress of the Work and at no additional cost to the Owner.

## § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may, in Architect's or Owner's sole discretion, be considered defective. This warranty shall include all parts and labor both on and off the Project site, together with all necessary transportation and shipping charges. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. ). All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable manufacturer, except as otherwise provided in the Contract Documents. The Contractor shall perform the Work in strict accordance with the Contract Documents and best industry practices. The Contractor, at its expense, shall upon demand by the Owner or Architect remove and replace materials, not meeting Specifications or materials failing to perform as represented or warranted by the manufacturer, regardless of whether incorporated into the Work. The Contractor shall

promptly replace or correct any Work or materials that the Owner or Architect rejects as failing to conform to the requirements of the Contract Documents. The foregoing warranty obligations are not limited by the provisions of Article 12, and are in addition to and not in limitation of any other warranty set forth in the Contract Documents or otherwise prescribed by law. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In the event of a conflict between provisions of the contract documents, provisions providing for the longest warranty period shall apply.

**§ 3.5.2** The warranties set forth herein shall survive termination of this Contract.

**§3.5.2.1** The Contractor agrees to assign to the Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the work and further agrees to perform the work in such a manner so as to preserve any and all such manufacturer's warranties.

**§3.5.2.2** All new installations, assemblies, systems, equipment, and labor and materials installed by this Contractor shall be guaranteed against all defects and failures for a minimum period of 2 years from the date of final completion.

**§3.5.2.3** For the above stated time periods from the date of final completion, the Contractor shall, at his own expense, promptly repair and put into first class condition any workmanship and materials in which defects may develop, and shall, at his own expense, promptly replace all defective equipment, apparatus, fixtures and materials, to the full satisfaction of the Owner.

**§3.5.2.4** The date of final completion of all work shall be stated in writing by the Engineer/Architect, and as acknowledged in writing by the Contractor.

**§3.5.2.5** During the guarantee period, the Contractor shall be responsible for all costs, incurred in making the defective work good, both for labor and materials, and for all resulting injuries and damages to the building and to equipment.

**§3.5.2.6** The guarantee provided by the Contractor is in addition to any warranty provided by equipment and material manufacturer. The Contractor's guarantee period shall not negate the longer guarantee period provided by equipment and material manufacturers.

**§3.5.2.7** The Contractor warrants good title to all materials, supplies and equipment installed or incorporated in the work.

**§3.5.2.8** The Contractor for itself and its successors and assigns, warranties to the Owner and their successors and assigns:

- a. The Warranty shall remain in effect for a period of time specified by appropriate Divisions of Specifications.
- b. The Contractor will make good at its own cost and expense all defects and all damage caused to the Owner, in all Work and all trades required by the Contract Documents for Warranty Work. All corrections to defective Work shall be made at the convenience of the Owner.

**§ 3.5.2.9** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with and issuance of the Certificate of Substantial Completion.

**§ 3.5.2.10** Neither final payment nor provision in the Contract Documents nor partial or entire occupancy of premises by Owner shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibilities for faulty or defective materials or workmanship. **§ 3.5.3** Refer to Section 01 7800 Closeout Submittal for additional requirements.

## **§ 3.6 Taxes**

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

**§ 3.6.2** Contractor shall pay all applicable local, state, federal and other taxes and licenses.

**§ 3.6.3.** The Owner is exempt from sales and use taxes for materials fully incorporated into the Work of the Contract as accepted and approved by the Architect. The Owner will take title to materials used in the Project in order to permit tax exemption. The Contractor shall pay all other sales, consumer, use and similar taxes incurred in connection with the Work provided by the Contractor. The Owner's exemption from sales and use tax does not apply to machinery, equipment, tools and other items purchased, leased, rented or acquired for the Contractor's use in part or entirely in connection with the Work. Upon request of the Owner or the Architect, the Contractor shall provide a bill of sale or other instrument indicating the quantities and types of materials purchased directly by the Contractor or Subcontractor for incorporation into the Work. Upon delivery of the materials to the Project sites, the Contractor shall mark or otherwise identify the materials to be incorporated into the Work. The Owner's tax exemption shall apply only to materials so identified and accepted.

**§ 3.6.3.1** Owner shall provide required exempt documentation when requested

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided Paragraph 2.2.1 in the Contract Documents, the Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall pay any costs or fees incurred to comply with such requirements, any fines or penalties imposed for failing to comply and any costs or fees incurred by Owner due to any failure to comply. If the Contractor fails to give such notices, the Contractor shall be liable for and shall indemnify and hold harmless the Owner including its Board of Education, the Architect and their respective consultants, employees, officials, officers and agents against any resulting fines, penalties, judgements or damages, including reasonable attorney's fees imposed on or incurred by the parties indemnified hereunder.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or by the municipality in which the project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

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

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

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

### **§ 3.8.2**

*(Paragraphs deleted)*

Refer to Section 01 2100 Allowances for payments.

*(Paragraph deleted)*

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent shall be at the site at all times when work is being performed and fluent in English, and be provided at all time with direct communications (cell phone) to all parties.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent including addresses and telephone numbers of the members of his organization who can be contacted in the event of an off-hours emergency at the building site. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. The Superintendent shall be changed upon request of the Owner for reasonable cause.

**§ 3.10** Contractor's Construction and Submittal Schedules Refer to Section 01 3216 or 01 3000 for additional

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

**§ 3.10.1.1** All of the dates provided for in any of the schedules prepared by the Contractor and submitted to the Architect, including all milestone and submittal dates, shall be considered to be "time of the essence" and may not be changed or modified without the Owner and Architect's specific written approval.

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

**§ 3.10.2.1** All of the dates provided for in any of the schedules prepared by the Contractor and submitted to the Construction Manager and Architect, including all milestone and submittal dates, shall be considered to be "time of

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the essence" and may not be changed or modified without the Owner or Construction Manager's specific written approval.

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

**§ 3.11 Documents and Samples at the Site**

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

**§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. All shop drawings are the product and property of the Contractor.

**§ 3.12.1.2** Refer to Section 01 3000 for additional requirements.

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

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

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

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

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

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

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the

deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

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

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

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

*(Paragraphs deleted)*

**§ 3.12.11** Comply with Submittal Procedures. Section 01 3000.

### **§ 3.13 Use of Site**

**§ 3.13.1** The Contractor(s) shall have limited access to the site on the inside and outside of the building. Comply with other sections regarding limited access. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

**§ 3.13.3** The Contractor shall perform and shall ensure that all Subcontractors and suppliers perform all Work in a manner that permits reasonable access to the Project site and to all adjacent premises. The Contractor shall not, and shall not permit any Subcontractor or supplier to, conduct the Work in a manner that disturbs or that could be reasonably anticipated to disturb operations and persons located in or on portions of the site not affected by the Work. The occupied portion of any of the Owner's buildings shall always comply with the minimum requirements necessary to maintain a certificate of occupancy.

**§ 3.13.4** Construction Rules and Regulations. The following rules and regulations shall be observed and enforced by all Contractors in connection with all phases of the Work:

- .1** In accordance with New York State law, smoking is prohibited anywhere on school property. Violators will be subject to arrest and/or fine of \$1,000 per occurrence. No alcoholic beverages or controlled substances are permitted on school property, and persons under the influence of alcoholic beverages or controlled substances may not enter in or remain on school property.

- .2 In accordance with the United States Gun-Free School Zones Act of 1994, no firearms are permitted within 1,000 feet of any school building, with certain limited exceptions as set forth therein. In addition to such limitations, no firearms shall be brought on school property without the Owner's express prior consent.
- .3 Appropriate protective gear (hard hats, safety shoes, goggles, etc.) are to be worn as required by OSHA standards, the New York State Department of Labor, and prudent practice. Shirts are to be worn at all times. No short pants are permitted.
- .4 Any person who uses inappropriate language, or who is disruptive to the school environment, will be banned from the site.
- .5 The Contractor's personnel shall not converse with school employees, students and or local residents.
- .6 All persons on the Project site will comply with all reasonable instructions regarding conduct and safety which are given by the Architect or the Owner's representative.
- .7 All construction materials shall be stored in a safe and secure manner. No deliveries will be allowed during school bus drop off or pick up hours as determined by the Owner. All deliveries shall be scheduled and coordinated with the Architect and the Owner's Security department. Unexpected or uncoordinated deliveries may be turned away by the Owner or Architect at the discretion or necessity of the Owner. The Owner's enforcement of this provision shall not be construed by the Contractor or Subcontractor as the basis for a claim of delay in time or monetary damages alleged to have been incurred as a result of refusal of delivery.
- .8 Use of the existing building facilities during construction is prohibited, specifically including toilet rooms, telephones and water fountains.
- .9 The Contractor's schedule shall allow for blackout dates during which no noisy Work will be allowed, as determined by the Architect and Owner. Contractors may consult the Owner's school calendar for all test and examination dates, but these dates are subject to change.
- .10 To gain access to the Work, entrances and parking areas will be designated by the Owner for the Contractor's use. Any vehicles or trucks in non-designated areas may be towed at the Contractor's expense. Gates shall always be locked unless a worker is in attendance to prevent unauthorized entry.
- .11 Should it become necessary to obtain access to the existing building during construction hours for measurements or other non-disruptive work, the Contractor shall be escorted by the Owner.
- .12 All persons must wear photo identification badges at all times while working at the site. Identification badges must be provided by each prime Contractor for their respective personnel, including subcontractors, consultants, visitors and others.
- .13 No asbestos containing products are to be used anywhere on this Project.
- .14 No lead containing products are to be used anywhere on this Project.
- .15 Asbestos manifests showing the locations of all known asbestos bearing materials are available in each building, and should be consulted prior to the commencement of any work, including but not limited to demolition.
- .16 Demolition is to occur only when the building is unoccupied. Dust partitions and negative air are to be installed prior to commencing demolition. The Contractor must obtain Owner or Architect approval on dust partitions and negative air prior to commencing demolition work. Debris shall be removed by using an enclosed chute or similar sealed system.
- .17 (a) Prior to the commencement of Work, the Contractor must submit construction plans, which show the location of dust particles, exhaust & fresh air fans and describe in detail the operation procedures during demolition and construction which may generate dust.  
(b) All entrances to classrooms shall be sealed with at least 6 mil. polyethylene sheeting to prevent dust created by demolition and construction work from entering the classrooms. Entrances and egress to the work zone shall be covered with a triple flap 6 mil. polyethylene doorway to allow access to the area without the release of dust. Contractors are additionally responsible for all debris and dust infiltrating adjacent and undisturbed areas of the building.  
(c) Shut down and lock out all electrical and HVAC in the work area. Cut, cap, and seal all duct work where it enters the work area from another space. All duct work and conduit within the space shall be removed during demolition work.  
(d) The Contractor shall install dust protection barriers and poly sheeting. There shall be no or minimum damage to adjacent surfaces. The Contractor is responsible to repair any damage to existing surfaces.

- .18 Painting or other chemical applications shall be done in the Owner's existing building only when it is unoccupied. Storage of chemicals and painting shall be outside the Owner's existing or new structures, and shall follow manufacturer's storage guidelines.
- .19 Oxygen or other gas containers shall be properly stored and secured per OSHA requirements, to the satisfaction of the Architect and Owner. Failure to do so will result in a \$250 back-charge, per occurrence.
- .20 The Contractor is responsible for cleaning its own materials and debris. Failure to maintain a clean work site daily will result in others performing the work at the Owner's request, and the Contractor will be back-charged for the cleaning cost plus construction administration fees. This may be done without the typical 3-day notice to the Contractor.
- .21 The Contractor must send a qualified representative, knowledgeable in the Project and authorized to make decisions on behalf of the Contractor, to every Project meeting.
- .22 The Contractor shall cooperate with the Owner's school principal and custodial staff; however, if any additional work is requested the Contractor shall not proceed unless written approval is received from the Owner's representative. The Contractor will not be compensated for any additional work performed without the Owner's prior written approval.
- .23 Deliveries sent to the Project site will not be signed for or unloaded by the Owner. They will be directed to the construction site and if no employee is on site, the delivery will be rejected, at the Contractor's expense.
- .24 The General Construction Contractor shall be responsible for managing dust and dirt. On the exterior, site shall be watered down frequently to prevent dust clouds from rising. Streets shall be maintained clean per the Owner's or Architect's request.
- .25 All hot tar roofing shall be installed after school hours or on weekends/holidays only. Kettles shall not be lit until all students have left the Owner's building.
- .26 Each Contractor shall submit a weekly work schedule indicating work days, work hours and manpower allocation.
- .27 No storage of materials will be permitted within the Owner's buildings at any time during construction. Contractors must provide exterior storage containers when required. The Contractor shall be responsible for securing appropriate space for its material with the Owner prior to delivery. Final location of storage containers shall be determined by the Owner. If insufficient space is available on the site, the Contractor shall provide local off-site storage, storage containers, etc. at its own cost and expense. Should any of the material stored on-site obstruct the progress of any portion of the Work or the Project, this material shall be removed by the Contractor without reimbursement of cost, from place to place or from the premises, as the Owner may direct.
- .28 The General Construction Contractor shall be responsible for maintaining all appropriate site safety signage.
- .29 The Contractor shall be responsible for protecting the Owner's property. All existing shrubs, trees, lawn fixtures, sculptures and miscellaneous equipment shall be protected at all times. Any removals or relocation of said objects, if allowed shall be as directed by Owner in writing.
- .30 The General Construction Contractor shall provide and service portable lavatories for the duration of construction as provided in the Contract Documents. Lavatories shall be serviced by the General Construction Contractor on a regular basis to maintain sanitary conditions.
- .31 The General Construction Contractor shall protect all existing roofs during construction and shall be responsible for any damage to roofs during construction. The General Construction Contractor shall make all repairs to any damaged areas, as required by the manufacturer of the roof system.
- .32 The General Construction Contractor shall be responsible for providing weather-proof protection over all rough openings, including windows.
- .33 Five (5) days after receipt of the Notice to Proceed, the Contractor shall provide two (2) copies of a videotaped recording of all existing conditions to the Architect. This taping shall provide a record of all existing buildings, grounds, exterior conditions and interior conditions. The Contractor shall schedule a representative of both the Owner and the Architect to be present at this taping. In the absence of this record, the Contractor shall be responsible for paying the costs associated with any and all repairs in an area where the Contractor is working or has worked, as may be deemed necessary by the Owner or the Architect.
- .34 Manufacturers Material Safety Data Sheets (MSDS) shall be available at the site for all products used in the Project.
- .35 No weapons are permitted on the Owner's property by law.

- .36 No Contractor, Subcontractor, nor any person on its behalf shall, in any manner, engage in discrimination, intimidation or harassment of any person on the Project site.
- .37 Proper attire is required for personal safety and clothing must not sexually explicit or contain messages of a vulgar nature, disrespectful of ethnic or religious groups, or which promote the use of tobacco, alcohol or drugs.
- .38 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.
- .39 The Contractor will ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work will be performed in such a manner that public areas adjacent to the site of the Work will be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor will use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work; or (2) the Owner's building in the event of partial occupancy, as more specifically described in Section 9.9.
- .40 The Contractor is required to protect its own Work and work areas, preconstruction, during construction and post construction.
- .41 During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.
- .42 The Contractor shall exert utmost care and diligence when working in or near any existing buildings or site work. The absence of protection around such items shall not excuse the Contractor from its liability to provide protection. Any damage to existing buildings, sitework or facilities shall be repaired and charged to the Contractor responsible for the damage.
- .43 The Contractor shall be responsible for the removal and replacement of existing ceiling tiles and grid in areas of the existing building where its Work is required and new ceilings are not scheduled for installation. In the event that the existing ceilings are damaged and cannot be replaced to the satisfaction of the Owner, the responsible contractor shall be liable for the costs of replacing in kind, the existing ceilings with new tile and grid.
- .44 The General Construction Contractor shall provide necessary and required security measures to adequately safeguard the construction site from vandalism and intrusion of unauthorized persons. The General Construction Contractor shall submit its means and methods of security to the Owner and Architect for review and comment. The Project site must be secured 24 hours a day, 7 days a week including holidays. The General Construction Contractor's failure to secure the site as required by this paragraph will result in the Owner engaging the services of such necessary personnel so as to provide such security. No notice will be given the General Construction Contractor of the Owner's intention to engage such security services and all costs and expenses associated with the Owner's security of the site in this regard will be back charged to the General Construction Contractor. While the Owner may have security guards patrolling the Project areas, the function of such security guards is not for the purpose of specifically guarding the Contractor's property or operations of work.
- .45 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the written consent of the Owner, which may be withheld in the sole discretion of the Owner.
- .46 Without limitation of any other provision of the Contract Documents, the Contractor will comply with all reasonable rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the buildings, as amended from time to time by the Owner.

**§ 3.13.5 Separation of Construction Areas from Occupied Spaces:** Construction areas which are under the control the Contractor and therefore not occupied by the Owner's staff or students shall be separated from occupied areas. Provisions shall be made by the Contractor to prevent the passage of dust and contaminants into occupied parts of the Owner's building. Periodic inspection and repairs of the containment barriers must be made to prevent exposure to dust or contaminants. Gypsum board must be used in exit ways or other areas that require fire rated separation. Heavy duty plastic sheeting may be used only for a vapor, fine dust or air infiltration barrier, and shall not be used to separate occupied spaces from construction areas. Methods of dust and fume control shall include, but not be limited to:

- .1 Adequate ventilation;
- .2 Wetting down;
- .3 Keeping bags of insulating materials, cement, etc. closed;
- .4 Controlled mixing of materials under field conditions;
- .5 Special attention should be used in sawing insulation and certain acoustical materials and storage of materials;
- .6 Job housekeeping must be maintained; and
- .7 Advising all personnel of hazardous conditions, including supervisors and workers.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Refer to Section 01 01731 or Section 01 1700 for additional requirements.

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

### **§ 3.15 Cleaning Up**

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

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

**§ 3.15.3** Prior to occupancy the Owner must perform custodial cleaning of the work area. If the Contractor has not removed construction debris, equipment, tool etc. which will prevent the Owner to perform custodial cleaning the Contractor will be back charged for additional cleaning costs incurred by the Owner.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. Federal, state, and local agencies with jurisdiction over the Project shall at all times have access to the Work wherever it is in preparation or progress. The Contractor shall provide for such access so that such agencies may perform their functions. The Contractor shall allow access for all required tests and inspections.

### **§ 3.17 Royalties, Patents and Copyrights**

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

### **§ 3.18 Indemnification**

*(Paragraph deleted)*

**§3.18.1** Indemnity Agreement - Compliance with the foregoing requirements as to insurance shall not relieve the contractor from liability under the indemnity agreement set forth in the general conditions as amended

**§3.18.1.1** To the fullest extent permitted by law, and cause its Subcontractors to, defend, indemnify and hold harmless the Owner, Architect, and their consultants, officers, directors, board members, agents and employees of any of them (collectively, "Indemnitees," individually, "Indemnatee") from and against all losses, damages, liabilities, actions, causes of action, claims, demands, fines, penalties, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and disbursements) arising out of or resulting from (a) the breach of any terms, covenants, or conditions on Contractor's part to be performed under the Agreement or the Contract Documents, (b) performance of and/or failure to perform the Work, (c) any statutorily imposed liability for injury to employees or failure to comply with any laws or regulations affecting the Work, or (d) acts, omissions or misconduct of the Contractor, its Subcontractors and others for whom the Contractor is responsible, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or economic losses or damages, damage to or destruction of property, including without limitation damage related to water infiltration, and for environmental damage, or to injury to or destruction of tangible property and nuisance (including loss of use), but only to the extent caused by the acts, omissions, wrongful conduct or a breach of contract of the Contractor, a Subcontractor, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Nothing contained herein shall be construed to obligate the Contractor to indemnify, defend, and hold the Owner harmless for claims caused solely by the Owner's negligent acts or omissions.

The Contractor agrees to include the following indemnity provision in each and every contract it enters into with a Subcontractor, and to require that Subcontractor to include such provision in each contract it enters into with any lower tier Sub-subcontractor: "To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Contractor, Owner, Owner's Consultants, and the Architect's consultants, and each of their respective representatives, board members, employees, directors, officers, and agents, from and against any and all claims, suits, actions, damages, losses, fines, penalties, costs, charges and expenses, including but not limited to attorneys' fees and the costs of any proceeding, arising out of or resulting from any performance of or failure to perform the Work, acts or omissions of the Subcontractor, its lower-tier Sub-subcontractors, and others for whom the Subcontractor is responsible, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or economic losses or damages, damage to or destruction of property, and for environmental damage, or to injury to or destruction of tangible property and nuisance, but only to the extent caused by the acts or omissions or a breach of contract of the Subcontractor, a Sub-Subcontractor to Subcontractor, and any person or entity directly or indirectly employed by them or any person or entity for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder."

**§3.18.1.2** In the event that any party is requested but refuses to honor the indemnity obligations hereunder, then the party indemnifying shall in addition to other obligations, pay the cost to the party requesting indemnification or seeking enforcement and enforcing this indemnity requirement including, but not limited to attorney's fees.

**§3.18.1.3** In addition, to the extent not covered above, the contractor or subcontractor shall defend, indemnify and hold harmless the Owner, Owner's Representative, Architect, Architect's Consultants, and agents and employees of any of them, from any and all claims, losses, damages, suits, obligations, fines, penalties, costs, charges and expenses, which may be imposed or incurred by or asserted against any of them by reason of any act or omission of such contractor, or any subcontractor, or any person or firm directly or indirectly employed by such contractor with respect to violations of OSHA requirements, rules and/or regulations

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

**§ 3.18.2.2** The Contractor's defense and indemnity obligations under this Section 3.18 shall specifically include all claims and judgments that may be made against the Indemnitees under the Labor Law of the State of New York, and similar laws of other state or governmental bodies having jurisdiction; and further, against claims and judgments arising from violation of public ordinances and requirements of governing execution of the Work.

**§ 3.18.3 Claims by Governmental Authorities.** To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against claims, damages, losses, and expenses arising out of

any claims made against the Indemnitees under the laws of federal, state, or other governmental bodies having jurisdiction over the Work, including but not limited to claims arising from violation of public ordinances and other requirements of governing authorities, due to the Contractor's method of execution of the Work or implementation of any of the Contractor's other obligations under the Contract Documents.

**§ 3.18.4 Liens and Security Interests.** To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against any actions, lawsuits, or other proceedings brought against Indemnitees as a result of liens or security interests of any type arising from the Work and filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees.

**§ 3.18.5** The Contractor shall further indemnify and hold harmless the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold harmless obligations under this Section 3.18 or as may otherwise be provided elsewhere in the Contract.

**§ 3.18.6** Subject to Section 3.18.7, all obligations of the Contractor under this Section 3.18 to defend the Indemnitees are obligations to provide full defenses at the sole cost and expense of the Contractor, regardless of any alleged culpability on the part of any Indemnitee or any ultimate determination of relative shares of liability of any Indemnitee or limitation of the Contractor's indemnity obligations in light of such determination.

**§ 3.18.7** To the extent any defense, indemnity, or hold harmless obligations under this Section 3.18 are made void or otherwise impaired by any law controlling their construction (including but not limited to laws limiting such obligations to the extent of the portion of damages caused by an indemnitor), such obligations shall be deemed to conform to the greatest rights to defense and indemnity permitted by such law (including but not limited to New York State General Obligations Law Section 5-322.1).

**§ 3.18.8** All provisions of this Section 3.18 shall survive termination of the Agreement or final completion. No obligations under this Section 3.18 shall be construed to negate, abridge, or reduce other rights or obligations to defense and indemnity, including but not limited to common law indemnity, which would otherwise exist as to a party or person described in this Section 3.18.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

### **§ 4.2 Administration of the Contract**

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

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents and to perform such inspections and observations as are necessary to allow the Architect to review and approve change orders, claims of any kind and interim and general requisitions for payment, all in accordance with the applicable provisions of the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods,

techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

#### **§ 4.2.4 Communications**

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

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

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

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Refer to Section 01 3000 for additional requirements.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.8.1** Neither the Owner, Owner's Representative nor Architect may issue instructions to the Contractor to change the amount of the contract, except by properly executed Change Order.

**§4.2.8.2** Instructions are issued by the Owner through the Owner's Representative or Architect, to the Contractor. The instructions shall not be carried out by the Contractor prior to a written order in the form of a change order, signed by the Owner, Architect and Contractor, authorizing a change in the Contract amount or an adjustment to the Contract Sum.

**§4.2.8.3** No amount shall be payable by the Owner to the Contractor for performance of work without an executed change order. Comply also Article 7.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

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

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith. Should the Architect's written interpretations, in the opinion of the Contractor, show additional work, or work of more expensive character than that shown or inferred by the Contract Drawings, it shall be the duty of the Contractor to so notify the Architect within five (5) days from receipt of same in order that proper adjustment may be made if found justifiable in the opinion of the Architect and the Owner. The Contractor shall assume full responsibility for all such work done without the approval of the Architect and the Owner

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

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

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

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

### **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor within 10 days after award of the Contract, shall notify the Owner and Architect in writing, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Copies of all subcontractor contracts are to be provided to the Owner's Representative.

§ 5.2.2 Each Contractor shall not award any work to any subcontractor or supplier without prior written approval of the Architect and Owner's Representative. Approval will not be given until Contractor submits to the Architect a written statement concerning the proposed award to the sub-contractor. The statement shall contain such information as the Architect or Owner's Representative will require..

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner and Architect have no reasonable objections. No increase in the Contract Price shall be allowed where a subcontractor is rejected by the Architect or Owner who is deemed unqualified to perform the particular work subcontracted by the Contractor or having too many current projects handled by insufficient personnel.

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

*(Paragraphs deleted)*

§ 5.2.5 Notwithstanding any other provisions of the Contract Documents, Contractor shall perform at least Seventy-five (75) % of the field work by its own employees.

§ 5.2.5.2 For the purpose of the preceding paragraph, any part of the work performed by supervisory personnel (persons above level of foreman) or by the office personnel and such items as bonds, certificates, shop drawings and similar items shall not be considered part of the percentage of work required to be performed by the Contractor's employees.

### § 5.3 Sub-Contractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The agreement between the Contractor and Subcontractor shall not provide, nor shall the Contract Documents be deemed to provide, any rights, remedies or redress by the Subcontractor(s) against the Owner.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. Should any Contractor sustain any damage or delay through any act or omission of any other Contractor having a contract with the Owner for the delivery and/or the installation of materials, supplies, equipment, plant, or appliances, or should the Contractor sustain any damage or delay through any act or omission of a subcontractor, the Contractor shall have no claim against the Owner or their Architects for such damage or delay, but shall have a right to recover or to claim such damage only from the other Contractor or subcontractor.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any

revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

## **§ 6.2 Mutual Responsibility**

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

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

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

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

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

**§ 6.2.6** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15

## **§ 6.3 Owner's Right to Clean Up**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Change Orders shall be submitted in total amounts for a particular change not in installments for each trade thereafter. All partial change order submissions will be rejected and returned to each Contractor for completion.

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

**§ 7.1.2.1** Field orders are an interpretation of the Drawings and/or Specifications which order minor changes in the Contractor's work which will not result in an increase or decrease in the Contract Sum. From time to time, the Architect may issue field orders to the Contractor. The work included in such field order shall be performed by the Contractor at no additional cost to the Owner and shall not form the basis for a claim for an extension of the Contract

Time. Hence, the Contractor shall perform the work included in field orders so as to cause no delay to its Work and/or the work of other contractors engaged by the Owner in connection with the Project.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Additional work performed without authorization of a fully-executed Change Order will not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time. No course of conduct or prior dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment of the Owner, shall be the basis for any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. No amount shall be payable by the Owner to the Contractor for performance of work without a written and fully executed Change Order.

**§ 7.1.4** When the Owner or Architect requests that the Contractor perform work which is not included in the Contract Drawings or Specifications and which will result in additional cost to the Owner, the Architect shall request that the Contractor submit its proposal for performing such additional work. The Contractor shall submit its proposal to the Owner and Architect for review. The Contractor's proposal shall include a complete itemization of the costs associated with performing its work including labor and materials. All proposals for any work that a Contractor, its Subcontractor(s) or Sub-subcontractor(s) perform in connection with additional work shall be properly itemized and supported by sufficient substantiating data, including but not limited to material descriptions, material quantities, material unit prices, labor trade listings, labor hour quantities, labor trade rates, equipment descriptions and equipment rates with a percentage allowance for overhead and profit.

## **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.
- .4 In cases where allowances are shown on the bid form and accepted by the Owner, they shall be used to determine the amount of addition to or deduction from the Contract Price. The unit prices or allowances when mutually agreed to be fair and equitable by Owner and Contractor will be made part of the Agreement.

**§ 7.2.1.1** Changes in the Work involving additional Work or deletion of Work effecting an addition to or subtraction from the Contract Sum shall not be made until the Contractor submits to the Architect the cost of the added or deleted Work with a complete and detailed listing of all Subcontractors involved, all materials, labor, overhead and profit and an appropriate Change Order has been issued. If requested, the Contractor shall submit detailed quotations for Subcontractors and material suppliers. Changes in the Work when not involving additions or deletions from the Contract Sum shall not be made until the Architect has issued an appropriate Change Order. All Change Orders must have the approval of the Owner and Architect in writing.

**§ 7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

**§ 7.2.3** Agreement on any Change Order shall constitute a final settlement of all Claims and other matters related to the change in Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change (including, without limitation, all costs of associated delay, interference, acceleration, inefficiency, overhead, as well as costs of material, labor and supervision), and any and all adjustments to the Contract Sum and the Contract Time. Payment of a Change Order shall constitute accord and satisfaction of all Claims of the Contractor in connection with the change or changes to the Contract addressed by the Change Order and it is understood and agreed that a signed Change Order shall be the complete and fully integrated agreement for all related costs and there are no oral or written understandings, reservations, representations or agreements, directly or indirectly, connected with the Change Order and not affirmatively stated on the signed Change Order. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payments as if such Work were originally part of the Contract Documents.

§ 7.2.4 Upon the Contractor's completion of the Change Order work, and prior to payment being made to the Contractor for such work, the Contractor shall provide the Owner with the following information:

- .1 Certified payrolls itemizing the labor actually utilized in connection with the Change Order work; and
- .2 Copies of invoices from its Subcontractors supplying work in connection with the Change Order work.

§ 7.2.5 Additional work performed without authorization of a Change Order will not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time, except as provided in Section 7.3, and except in the case of an emergency as provided in Section 10.4

§ 7.2.6 Final determination of all claims shall be by the Owner

### § 7.3 Construction Change Directives

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

§ 7.3.1.1 If the Construction Change Directive involves an adjustment to the contract price, the adjustment will be computed by the Architect in form conforming to 7.3.3.5.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. In the event the Contractor and the Owner cannot agree on the sum by which the Contract Sum or the amount of time by which the Contract Time is to be increased or reduced based upon changes to the scope of the Work as described in Article 7, the Architect shall issue a Construction Change Directive reflecting the increase and/or reduction of the scope or price of the Contractor's Contract.

§ 7.3.2.1 If the Owner and the Contractor cannot agree that the requested Work properly forms the basis for a Change Order or on the sum by which the Contract is to be increased or reduced based upon changes to the scope of Work, the Architect shall issue a Construction Change Directive signed by the Owner and Architect reflecting the addition to, or deduction of, the scope of Work and the Contractor shall (a) in the case of additional work to be performed by the Contractor, perform such additional work in an expeditious manner so as not to delay the Work of the Contractor or other Contractors working at the site and keep records of its performance of such additional work, and (b) in the case of work to be deducted from the scope of the Contractor's Work, refrain from taking any steps in connection with the work associated with the deduction of the Contractor's Work. The Construction Change Directive shall include: (a) a description of the work being added or deducted from the Contractor's scope of Work; (b) the amount the Owner has determined to be the cost associated with the additional work or deduction of the scope of the Contractor's Contract until the Owner and the Contractor agree upon the increase or decrease in the Contractor's Contract Sum, or until a claim filed by the Contractor has been determined; and (c) the extent to which the Contract Time will be adjusted as a result of the change in the scope of Work. Any claims must be filed in accordance with the requirements set forth in Article 15 of these General Conditions. Failure to timely file any claim in accordance with requirements set forth therein shall constitute a waiver of such claim.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents Section 01 2100 or subsequently agreed upon (unit prices shall be deemed to include all costs and expenses for the Contractor's changed Work, including costs of general conditions, insurance/bonds and overhead and profit attributable to the change);
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 All additions and deductions to the Contract Price not covered by unit prices resulting from changes in the Work shall be determined by the following outline:
- .5 **CONTRACT WORK**
  - a. Materials (Itemized Breakdown)
  - b. Rent of Equipment (Listed separately)

- Sub-Total #1**(items (a & b) \_\_\_\_\_
- c.** Sales Taxes (where applicable on Sub-Total #1) \_\_\_\_\_
- d.** Labor (Itemized Breakdown) \_\_\_\_\_
- e.** Insurance (Workmen's Compensation  
Social security or as otherwise  
required and/or specified) \_\_\_\_\_
- Sub-Total #2** (items c, d & e) \_\_\_\_\_
- f.** Overhead & Profit (% x Sub-Total #2)  
As per Article 7.3. \_\_\_\_\_
- g.** Sub-contract Work  
(If applicable, in identical breakdown,  
as shown above Sub-Total #1 & 2) \_\_\_\_\_
- h.** Contractor's overhead & profit  
on sub-contract changes (5%) \_\_\_\_\_
- Sub-Total #3** (items f, g & h) \_\_\_\_\_
- i. TOTAL QUOTATION (Sub totals 1, 2, 3)** \_\_\_\_\_

**§ 7.3.3.1** Change Orders shall be submitted in total amounts for a particular change, not in installments for each trade thereafter. All partial change order submissions will be rejected and returned to the Contractor for completion.

- .1** Overhead and profit combined, included in the total cost to the Owner, shall be based on the following schedule:

For the Contractor, for any Work performed by the Contractor's own forces, ten percent (10%) of the cost.

For the Contractor, for Work performed by Contractor's sub-contractor, five percent (5%) of the amount due the sub-contractor.

For each sub-contractor or sub-contractor involved, ten percent (10%) of the cost

- .2** Cost to which overhead and profit is to be applied shall be limited to the following:

Labor.

Cost of Materials, including sales tax and cost of delivery.

Workers' or Workmen's Compensation Insurance.

Rental value of equipment and machinery.

**§ 7.3.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

*(Paragraphs deleted)* **§ 7.3.4.1** In order to facilitate checking of quotations for extras or credits, all proposals, shall be accompanied by a complete itemization of costs including labor, materials and sub-contracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are sub-contracts, they shall be itemized also. All change orders without such itemization will be returned to the Contractor for resubmission

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15. Failure to timely file any claim in accordance with the requirements set forth therein shall constitute a waiver of such claim.

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work, not in dispute and completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 Minor Changes in the Work

§7.4.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. The work included in such order shall be performed by the Contractor at no additional cost to the Owner and shall not form the basis for a claim for an extension of the Contractor's time to complete its Work. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall perform the work included in such orders so as to cause no delay to its Work and/or the work of other contractors engaged by the Owner in connection with the Project

§7.4.2 Minor Changes in the work are not to be construed as Change Orders. A signed minor change is not an approved change order.

### ARTICLE 8 TIME

#### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed or extended by the failure to act of the Contractor or persons or entities for whom the Contractor is responsible to act.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of final completion is the date certified by the Architect and Owner in accordance with Section 9.10. Unless otherwise agreed in writing by the Owner, the Contractor agrees that final completion shall occur not more than thirty (30) calendar days after the date of Substantial Completion.

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

**§ 8.1.5** Dates indicated in Section 01 1000 Summary of Work or Section 01 11010 Milestone Schedule are dates critical to the Owner's operations that establish when a part of the work is to commence or be complete. All Milestone Dates are of the essence and shall have the same meaning as Substantial Completion for the purpose of Liquidated Damages in this Article 8. Liquidated damages applied to Substantial Completion shall apply to Milestone Dates.

## **§ 8.2 Progress and Completion**

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

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner and the Owner's approval of such insurance. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Work can not start until the required insurance and bonds are provided and the Contract has been executed.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified and, further, to provide such protections as may be necessary. It is expressly understood and agreed by the Contractor that the time for the completion of the Work is a reasonable time for its completion, taking into consideration the average climatic range and usual weather conditions prevailing in the Project's locality.

## **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control or (3) by other causes that the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. No extension of time will be granted for changes in the work or labor disputes, or work stoppage due to asbestos removal. This paragraph shall control where a conflict appears among the contract documents.

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

**§ 8.3.3** Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Paragraph 8.3.1, shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the work, (3) loss of productivity, or (4) other similar claims (collectively referred to in this Paragraph 8.3.3 as delays) whether or not such delays are foreseeable, unless a delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the work, or directing suspension, rescheduling or correction of the work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contract's performance of the work.

## **§8.4 LIQUIDATED DAMAGES**

**8.4.1** Contractor realizes that time is of the essence on this Contract and the date of Substantial Completion shall be no later than the date set forth in Article 3.2 of the Contract. The Contractor understands that substantial disruption of the Owner's educational process will occur if the project is not completed by the date of substantial completion. In the event the Contractor fails to substantially complete the work under this contract by said scheduled date(s), the sum per calendar day, as follows:

Contractor

\$750.00

and will, at the sole discretion of the Owner, be subtracted from the payment due the Contractor (or, if the amount due

Init.

the Contractor as Payment is insufficient, any deficiency shall be paid by the Contractor to the Owner), except in cases where a delay is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, or delays of Subcontractors or Suppliers due to such causes. Delay in acquisition of materials other than by reason of or freight embargoes will not constitute a delay excusable under this provision unless approved by the Owner in writing.

**§8.4.2** Within five calendar days from the occurrence of any such delay, the Contractor shall notify the Owner, in writing, of the cause of delay. The Owner will ascertain the facts and extent of the delay, and extend the time for completing the Work when, in his judgment, the findings of fact justify such an extension. Owners findings of fact will be final.

**§8.4.3** In addition to Liquidated Damages, the Contractor shall be liable for all additional costs incurred by the Owner due to the failure of the Contractor to complete each Phase as required. The additional costs shall include but not be limited to the following:

**§8.4.3.1** Staff, as required, to make the facility accessible to the contractor; for the Architect and Consultants to perform inspections after the completion date of each phase. Expenses and costs incurred by the Owner for additional services of the Owner's Representative, in addition to additional inspections.

**§8.4.3.2** The cost of additional inspections by the Architect and their consultants will be at the rate of \$300.00 per hour.

**§8.4.4** The said sum per calendar day and additional costs set out above, shall constitute the Liquidated Damages incurred by the Owner for each day of delay beyond the agreed upon dates of substantial completion. Such Liquidated Damages shall be in addition to any other damages (other than reason of delay) Owner may incur as a result of Contractor's breach of Contract, to include those which may be incurred pursuant to of the General Conditions.

**§8.4.5** In addition to the liquidated damages described above, in the event the Contractor fails to complete all work under this Contract by said Scheduled Dates, the Contractor will, at the sole discretion of the Owner, not be permitted to perform any work during normal hours. Such work shall only be performed after hours, Saturdays, Sundays, holidays or periods when the facility is unoccupied, at no additional cost to the Owner. This paragraph in no way limits any other rights, or remedies of the Owner under this Contract.

**§8.4.6** All costs will be subtracted from payment due the Contractor (or, if the amount due the Contractor for payment is insufficient, any deficiency shall be paid by the Contractor to the Owner.

**§8.4.7** This section shall in no way prevent the Owner from enforcing any other remedies it may be entitled to pursuant to the Contract, including the right of termination, and in the cases of termination, any damages suffered by the Owner shall not be considered damages by reason of delay, regardless of the reason for termination.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

**§ 9.1 Contract Sum** (Refer to Section 01 2000 Price and Payment Procedures for additional requirements)

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

**§ 9.1.2** If Unit Cost Allowances prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. Refer to Section 01 2100.

**§ 9.1.3** Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payments to the Contractor if and for so long as the Contractor fails to perform any of its obligations or otherwise is in default under any of the Contract Documents; provided, however, that any such hold back shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor.

## § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work.

## § 9.3 Applications for Payment

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

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and installed. If approved in advance by the Owner, payment maybe made for materials and equipment suitably stored on the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such material and equipment or otherwise protect the Owner's interest, and shall include applicable insurance and storage Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.2.1 All materials and equipment, including materials and equipment stored on-site but not installed, or stored in secured warehouse) will require a bill of lading showing the exact value. upon which partial payments have been made shall become the property of the Owner, but the care and protection of such materials and equipment shall remain the responsibility of the Contractor until incorporation and approved into the Work, including maintaining insurance coverage on a replacement cost basis without voluntary deductible.

Notwithstanding payment by the Owner, all warranties and/or guarantees required by the Contract Documents shall not begin to run until the Contractor has completed its Work.

§ 9.3.2.2 In no case will more than 90% be approved if the item is not installed. Insurance certificates will be provided specific to materials stored (for on-site or offsite items).

§ 9.3.2.3 When Fuller and D'Angelo, P.C. or Owner's Representative requires substantiating information, submit data justifying dollar amounts in question. Provide one copy of data with cover letter for each copy of submittal. Show application number and date, and line item by number and description.

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

§ 9.3.4 Application for all Payments must be accompanied by certified payroll records and all releases of liens for previous applications **from Contractor and their subcontractors** and a sworn and notarized statement that all subcontractors have been paid to at least 95% of previously requisitioned sums. In the event a lien is filed on the Owner's property, by any entity, due to the actions of the Contractor, regardless of the relationship between the lien and the work performed on this project all payments will be held in abeyance until such lien is bonded or removed.

## § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within ten business days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) , notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1;

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents
- .8 failure to comply with scheduled milestone or submittal dates.
- .9 damages resulting from the Contractor's failure to notify the Architect of errors or inconsistencies between and among the Contract Documents;
- .10 failure of the Contractor and/or its Subcontractors to comply with the requirements for maintaining record drawings.
- .11 the Architect's discovery or observation of work which has been previously paid for by the Owner which is defective and/or incomplete.
- .12 such other acts and/or omissions by the Contractor in connection with the performance of its Work that do not comply with the Contract Documents; or
- .13 the amount requested exceeds the percent completion of work on the Project site(s).
- .14 receipt by the Owner of a notice of withholding from the New York State Department of Labor or other administrative agencies having jurisdiction over the Project;
- .15 failure to comply with applicable federal, state or local statutes, regulations, and/or laws, including, without limitation, laws applicable to the provision of certified payrolls;
- .16 failure of the Contractor to provide executed performance and payment bonds and a current certificate of insurance;

- .17 damages caused to the Owner, the Construction Manager, the Architect, Separate Contractor or other Contractor as a result the Contractor's performance of its Work;
- .18 the Architect's discovery or observation of work which has been previously paid for by the Owner which is defective or incomplete;
- .19 the amount requested exceeds the percent completion of Work on the site; or
- .20 breach of this Agreement.

Notwithstanding the extent to which the Architect certifies an Application for Payment, the Owner shall have the right to withhold payment, in whole or in part, should the Owner determine that any of the grounds set forth in this Section 9.5.1 do in fact exist. If the Owner withholds payment, in whole or in part, the Owner shall promptly provide to the Contractor and Architect a written explanation of the reason(s) for which payment is withheld and shall promptly pay, in accordance with the Contract Documents, all amounts which are not in dispute.

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

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

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

## § 9.6 Progress Payments

§ 9.6.1 Refer to Section 01 2000 Price and Payment Procedures for additional requirements.

§ 9.6.1.1 Payment Period: Submit at intervals stipulated in the Agreement but not more than one per month.

§ 9.6.1.2 Form to be used: AIA G702 and AIA G703.

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

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

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

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

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any

tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

*(Paragraph deleted)*

## § 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within ten business days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty business days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon ten additional business days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received.

## § 9.8 Substantial Completion

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

§ 9.8.1.1 Contractor shall advise the Construction Manager and Architect of pending insurance changeover requirements.

§ 9.8.1.2 Contractor shall obtain and submit releases permitting Owner's Representative and Architect unrestricted use of the Work and access to services and utilities. Include occupancy permits, operating certificates, and similar releases

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's Representative and Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner's Representative and Architect to determine Substantial Completion. **If the Architect is required to inspect the Contractor's work more than twice, the Contractor shall be back charged for the cost of the Architect's services for the additional inspections.**

§ 9.8.3.1 Certificate of Substantial Completion will be issued only after completion of all punch list items or Owner's Representative and Architect will notify Contractor of items, either punch list or additional items identified by Architect, that must be completed or corrected before a certificate will be issued. After completion of all punch list items submit the following:

- .1 Application for Payment showing 100 percent completion for portion of the Work claimed as substantially completed.
- .2 Manufacturer's Warranties/guarantees.
- .3 Contractor's Warrantee **Two (2)** years minimum and extended warranties.
- .4 Maintenance agreements, if any.
- .5 Manifest for disposal of Hazardous Material.
- .6 Manifest for disposal of material.
- .7 Test/adjust/balance reports and records.
- .8 Maintenance Manuals and Instructions Manuals
- .9 Signed Receipt by Owner's Representative of spare parts and attic stock.
- .10 Meter readings
- .11 Start-up performance reports.

- .12 Changeover information related to Owner's occupancy, use, operation, and maintenance.
- .13 Advice on shifting insurance coverage.
- .14 Final progress photographs.
- .15 List of incomplete Work, recognized as exceptions to Architect's "punch list".
- .16 Removal of temporary facilities and services.
- .17 Removal of surplus materials, rubbish and similar elements.
- .18 As Built Drawings.
- .19 Project Record Documents.
- .20 DOL Final Completion Form. (PW 200).
- .21 This application shall reflect Certificates of Partial Substantial Completion issued previously for Owner occupancy of designated portions of the Work.

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

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The Contractor understands that no retainage will be paid until all work, including punch lists items are complete and submission of all closeout documents as listed in Section 01 7800 Closeout Submittals are approved.

#### **§ 9.9 Partial Occupancy or Use**

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

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

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

#### **§ 9.10 Final Completion and Final Payment**

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

§ 9.10.1.1 If the Contractor's Work is not accepted by the Architect after final inspection and additional time is required to complete items identified during the final inspection, the date starting the warranty periods described in the Contract Documents shall be set by the Architect at his discretion, but no later than the date of the Final Certificate for Payment.

§ 9.10.1.2 If the Architect is required to perform more than one final inspection because the Contractor's Work fails to comply with the requirements of the Contract Documents, the amount of compensation paid to the Architect by the Owner for additional services shall be deducted from the final payment to the Contractor.

§ 9.10.2 Neither final payment nor any retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) completion of all "punch list" items, (6) submission of all closeout documents as listed in Section 01 7800 Closeout Submittals (7) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (8) Architect's punch list certifying all punch list items have been completed with each item signed off by the Owner's Representative and Contractor. and (9) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 It is understood by the Contractor that the maximum payment due the contractor prior to final payment shall be Ninety (95%) of the Contract amount and the final Five (5%) will be due only after the above is satisfied.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment may be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.
- .5 defective work or concealed conditions.

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

## § 9.11 APPLICATIONS FOR PAYMENT WHEN BEHIND SCHEDULE

§ 9.11.1 When the project falls behind schedule the contractor shall demonstrate the actions to be taken to put the project back on schedule.

§ 9.11.1.1 Payments will not be approved until satisfactory evidence is presented to put the project on schedule

## § 9.12 APPLICATION FOR PAYMENT AFTER SCHEDULED COMPLETION DATE

**§ 9.12.1** In the event the work is not completed by the schedule date, listed in Section 01 1000 - Summary, and in addition to the other remedies described, the Architect will not review progress payment requisitions submitted after the construction completion date, and the Owner will not issue any progress payments after that date, until all work is completed.

**§ 9.12.2** Only one requisition for work performed, after the construction completion date, may be submitted, and it may be submitted only when all work is complete and a Punch List inspection is conducted; said requisition may be submitted when the work at 100% complete, less 5% retainage.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Prior to beginning any work, the Contractor shall submit a copy of its safety plan to the Architect. The Contractor shall make the participation of its Subcontractors in its safety plan and program mandatory. The Contractor and its Subcontractors shall conduct their operations in accordance with the Safety Guides for Construction issued by New York State Education Department ("SED") and the Contractor's Safety Plan and Program.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction: and
- .4 The work on the project of any other contractors or any property of any other contractors work on the project

**§ 10.2.1.1** The Contractor shall maintain at the project site MSDS documentation for all material brought on site.

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

- .1 The work on the project of any other contractors or any property of any other contractors work on the project;
- .2 shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement during construction.

**§ 10.2.2.1** Any and all fines or citations levied against the Owner, Architect, or Owner's Representative due to the failure of the Contractor to comply with statutes, ordinances, codes, rules, regulations, or lawful orders of any governing authority, shall be paid for by the Contractor. This shall include any interest or late charges which accrue due to the Contractor's failure to remit payment upon receipt of such levies.

**§ 10.2.2.2** Any reference made to rules and regulations promulgated by various governmental agencies with the Specifications or Construction Drawings are for the Contractor's benefit. The issuance of compliance to said regulations by workers employed by the Contractor or by sub-contractors is the sole responsibility of the Contractor; and that, notwithstanding any reference to any rule or regulation, that the Architect, the Architect's construction observer (Clerk-of-the-Works) or any representative of the Owner is not assuming any duty to provide supervision of construction methods in processes.

- .1. Each Contractor shall assign one person from his staff to be on-site safety coordinator.
- .2 Each Contractor is solely responsible for overall job site safety, the safety of his employees and the conduct of his work and that of his sub-contractors.
- .3 Each Contractor affirms he is fully versed in all State, Federal and local regulations pertaining to safety including OSHA regulations, and pertaining to any and all construction operations

,4 All site personnel have appropriate Department of Labor certification.

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

**§ 10.2.3.1** The Contractor shall be responsible for all costs incurred by the Owner caused by false security alarms and false fire alarms set off by the Contractor, its Subcontractors, employees, suppliers, officers, directors or servants.

**§ 10.2.3.2** All safety equipment including but not limited to hard hats and other personal protective materials and equipment (masks, face shields, gloves, etc.) required for the Contractor to perform its work are to be supplied by the Contractor and/or its Subcontractors.

**§ 10.2.3.4** The Contractor acknowledges that the Labor Law of the **State of New York**, and regulations adopted thereunder, place upon both the Owner and Contractor certain duties and that liability for failure to comply therewith is imposed on both the Owner and Contractor regardless of their respective fault. The Contractor hereby agrees that, as between the Owner and the Contractor, and to the extent permitted by law, the Contractor is solely responsible for compliance with all such laws and regulations imposed for the protection of persons performing the Contract. For additional indemnity obligations see Section 3.18 of these General Conditions.

**§ 10.2.3.5** When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

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

**§ 10.2.4.1** When use or storage of hazardous materials or equipment or unusual construction methods are necessary to promulgate the Work, the Contractor shall give the Owner's Representative reasonable advance notice, and shall maintain on the site, a full set of safety instructions relating to all such materials.

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

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

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

#### **§ 10.2.8 Injury or Damage to Person or Property**

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

#### **§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not

addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Owner shall only be responsible to pay for the services of the laboratory if the material or substance reported by the Contractor is found to be hazardous. When the material or substance has been identified the Contractor shall submit a proposal to abate the material. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs..

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable. .

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

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

*(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 the Owner or 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. All policies shall be provided by insurers licensed to conduct business in New York State.

**§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** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to conduct 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.
- .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.

*(Paragraph deleted)*

**§11.1.2** Certificates of Insurance:

- .1 Each certificate shall include the following clause: 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 Architect 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, Owner's Representative, their respective 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 Indemnitee hereunder.
- .4 The Contractor and each of its Subcontractors and to all Shared Services Contracts (Purchase Order Agreements) shall include the Owner, Architect, 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.
- .5 Additional Insured status shall be provided by ISO endorsement CG 20 38 04 13, CG 220 38 and CG 20 37. A completed copy of the endorsements must be attached to the Certificate of Insurance.
- .6 A copy of the endorsement(s) providing additional insured sections must be attached to the Certificates.
- .7 A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/15) must be included with the certificates of insurance. For any "Yes" answers on Items G through L on this Form— additional details must be provided in writing.
- .8 Shall use the forms adopted and/or required by the New York State Workers' Compensation Board for proof of Workers' Compensation and NYS Disability Insurance, an ACORD certificate is not acceptable proof.
- .9 Renewal Certificates of Insurance: Renewal Certificates of Insurance must be filed with the Owner, Owner's Representative, Architect at least five (5) days prior to the expiration of any policy

**§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 Insurance: Statutory Workmen's Compensation Insurance (C-105.2 or U-26.3) and NYS Disability Insurance (DB-120.1)** for all employees 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 Insurance for all of the employees to be engaged in such work. Provide Statuary Limits and Coverages. Proof of coverage must be on the approved specific form, as required by **the New York State Workers' Compensation Board**. ACORD certificates are not acceptable.
- .2 Employers Liability Insurance:** Not less than \$1,000,000 for all employees to be engaged in work on the Project.
- .3 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:	\$2,000,000.00.
Products and Completed Operations	\$2,000,000
Personal Injury:	\$1,000,000.00.
Fire Damage Legal:	\$50,000.00.
Medical Payment:	\$10,000.00

(General Aggregate to apply on a per project basis).

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

- .4 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.
- .5 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 vehicle es 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

- .6 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.
- .7 Umbrella/Excess Liability Insurance.** Limit: \$5,000,000.00 per occurrence and aggregate excess over Underlying Comprehensive General Liability, Automobile Liability, Employers Liability Policies.
- .8 Self-Insured Retention** \$10,000.00 per occurrence.
- .9 Owner Contractor Protective Liability Insurance (OCP):** The Contractor shall purchase and maintain an Owner's Protective Liability policy naming the Owner, Owner's Representative, 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 for project up to 1,000,000.: \$1,000,000.00 each occurrence.  
\$2,000,000.00 aggregate

Limits of Liability for project over 1,000,001: \$2,000,000.00 each occurrence  
\$4,000,000.00 aggregate

- .10 Asbestos/Lead/Hazardous Materials Liability Insurance :** With coverage for the services rendered for the Owner, 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: Statuary

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

Employer's Liability: \$100,000

Said policy shall be endorsed to indicate that the term "Insured" shall include the "Owner" Owner's Representative, and Architects 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 Architects 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:

- .11 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 subcontractors 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.

- .12 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 shall provide to the Architect 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.

- .13 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 subcontractors and suppliers.

- .14 Testing Company Errors and Omission Insurance:** \$1,000,000 per occurrence/\$2,000,000 aggregate for the testing and other professional acts of the Contractor performed under the Contract with the Owner.

*(Paragraph deleted)*

**§11.1.5 Subcontractors Insurance:** The Contractor agrees to provide all subcontractors 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.

§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 Architect 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 Architect.

§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 and Architect 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 and Architect. 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, Architect and the Contractor shall obtain and record like certificates from his subcontractors

§11.1.14 Insurance Carriers: All insurance carriers providing coverage on the project must be **licensed** to conduct business and issue the type of insurer the carrier is providing to the Contractor in the State in which the project is located, and in the State in which the Contractor is domicile. The companies must be **A. M. Best "Secured"** rated or better. This requirement applies to all subcontractors 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 this project, at the election of the Owner, the contract maybe 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 subcontractors. Said policy shall be endorsed to indicate that the term "Insured" shall include the Owner, Construction Manager, Architect 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 and Architect.

**§11.1.19.1** In the event that any of the insurance coverage to be provided by the Contractor to the Owner and Architect contains a deductible, or the insurance provided by the Owner and Architect contains a deductible, the Contractor shall indemnify and hold the Owner and the Architect harmless from the payment of such deductible, for all claims arising from any acts or omissions of Contractor or Contractor's officers, directors, employees, Subcontractors, suppliers or any others engaged by Contractor directly or indirectly to perform Contractor's Work on the Project, which deductible shall in all circumstances remain the sole obligation and expense of the Contractor

**§ 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 written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner or Owner's Representative 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 and Owner's Representative 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 Owner's Representative, 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. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's Representative and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion, the Contractor, a subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner

##### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The two-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 except as to the corrective work performed and subject to the continued existence of any manufacturer's warranty, if applicable.

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

§ 13.1.1 This Contract shall be governed by and interpreted in accordance with the substantive laws of the State where the Project is located without recourse to principles of choice of law. The venue of any dispute resolution proceedings or actions shall be in the county in which the Project is located.

§ 13.1.1.2 The Contractor shall at all times observe and comply with all Federal, State and Local Laws, rules and regulations and all policies, rules, regulations and protocols of the Owner, in any manner affecting the Work and all such orders as exist at present and those which may be enacted in the future, by bodies or tribunals having jurisdiction or authority over the Work and the Contractor shall indemnify and save harmless the Owner and its Board of Education, Owner's Representative, Architect employees, officers, agents, or servants against any claim or liability arising from, or based on, a violation of any such law, ordinances, regulation, order or decree by the Contractor or the Contractor's officers, directors, employees, Subcontractors and suppliers.

§ 13.1.1.3. Historical lack of enforcement of any law, local or otherwise, shall not constitute a waiver of Contractor's responsibility for compliance with such law in a manner consistent with the Contract Documents unless and until the Contractor has received written consent for the waiver of such compliance from the Owner.

§ 13.1.2 The Contractor specifically agrees, as required by New York Labor Law, Sections 220, and 220-d, as amended, that:

- .1 No laborer, workman or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or any part of the Work contemplated by the Contract, shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
- .2 The wages paid for a legal day's work shall not be less than the prevailing rate of wages as defined by law.
- .3 The minimum hourly rate of wages to be paid shall not be less than that stated in the Specifications, and any redetermination of the prevailing rate of wages after the Contract is approved shall be

deemed to be incorporated therein by reference as of the effective date of redetermination and shall form a part of this Contract. The Labor Law provides that the Contract may be forfeited, and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

- (a) The stipulated wage scale as provided in Labor Law, Section 220, Subdivision 3, as amended; or
- (b) The stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended

**§ 13.1.3** The Contractor specifically agrees, as required by the provisions of New York Labor Law Section 220-e, as amended, with respect to operations performed within the territorial limits of New York State, that:

- .1 In hiring of employees for the performance of work under this Contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no Contractor, Subcontractor nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
- .2 No Contractor, Subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, disability, sex or national origin.
- .3 There may be deducted from the amount payable to the Contractor by the Owner under this Contract a penalty of fifty (\$50.00) dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of this Section 13.1.3.
- .4 The Contract may be cancelled or terminated and all monies due under the Contract forfeited for a second or any subsequent violation of the terms and conditions set forth in this Section 13.1.3.

**§ 13.1.4** The Contractor shall comply with all the provisions of the Immigration Reform and Control Act of 1986 and regulations promulgated pursuant thereto and shall require its Subcontractors to comply with same. The Contractor shall and does hereby agree to fully indemnify, protect, defend, and hold harmless the Owner, Owner's Board of Education, Owner's Representative, Architect, agents and employees from and against any penalties, fees, costs, liabilities, suits, claims, or expenses of any kind or nature, including reasonable attorney's fees, arising out of or resulting from any violation or alleged violation of the provisions of said laws by Contractor or its Subcontractor(s) in connection with the Work of the Contract Documents.

**§ 13.1.5** The Contractor shall maintain policies of employment as follows:

- .1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of age, creed, race, religion, color, sex, national origin, sexual orientation, gender identify or expression, military status, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their age, race, creed, religion color, sex, national origin, sexual orientation, gender identify or expression, military status, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.
- .2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to age, creed, race, religion, color, sex, national origin, sexual orientation, gender identify or expression, military status, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence.

**§ 13.1.6** Dust Hazards - The Contract shall be void if the Contractor fails to install, maintain, and effectively operate appliances and methods for the elimination of harmful dust when a harmful dust shall have been identified in accordance with Section 222-a of the Labor Law of the State of New York.

## **§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

## **§ 13.3 Rights and Remedies**

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

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

**§ 13.3.3** Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

## **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures.. Refer to Section 01 4000 Quality Requirements for additional requirements.

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

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

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

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

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

§ 13.5 Interest Payments due and unpaid under the Contract Documents shall not bear interest.

### § 13.6 TIME LIMITS ON CLAIMS

§ 13.6.1 The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law,

### § 13.7 LIENS

§ 13.7.1 If the Contractor or any of its subcontractors or suppliers should cause a Mechanic's Lien to be placed upon the property, then the Contractor shall be liable for any and all legal or bonding or insurance fees related to the removal of the Mechanic's Lien or the defense of any Mechanic's Lien enforcement or foreclosure proceeding. Such legal or bonding or insurance fees shall also be a deduction by the Owner from any moneys due or to become due to the Contractor.

### § 13.8 SEXUAL HARASSMENT PROHIBITED

§ 13.8.1 Federal and state laws and the policies of the Owner prohibit sexual harassment of employees. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that create a hostile or offensive working environment for students, employees and volunteers of the Owner and employees, agents, consultants, suppliers, subcontractors and others engaged directly or indirectly by Contractor to perform work on the Projects. The Contractor shall exercise control over its employees, agents, consultants, subcontractors, and suppliers so as to prohibit acts of sexual harassment of students, employees and volunteers of the Owner. In the event the Owner, in its reasonable judgment, determines that the Contractor or its employees, agents, consultants, subcontractors and/or suppliers have committed an act of sexual harassment, upon notice from the Owner, the Contractor shall cause such person to be removed and shall take such other action as may be reasonably necessary to cause such sexual harassment to cease. In the event the Contractor or its employees, agents, Subcontractors or suppliers believes it has been the subject of sexual harassment by the Owner, its elected and appointed officials, students, volunteers, vendors, employees or agents, it shall give notice to the Owner; so, the Owner can take such action as may be reasonably necessary to cause any sexual harassment to cease.

### § 13.9 GENERAL PROVISIONS

§ 13.9.1 Contractor hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.9.2 Contractor is obligated, by virtue of entering into a contract with the Owner, to ensure that absolutely no asbestos containing material is used in conjunction with the Work. It is the Contractor's sole responsibility to provide assurance that no asbestos containing material is built into the construction, nor does any equipment used in the construction contain any asbestos containing material. If asbestos containing material is found, at any time during or after the construction is completed, it shall be the responsibility of the Contractor who installed said material to remove it and replace it with new non-asbestos containing material, as per federal, state and local mandates, and to indemnify all their employees, agents, or servants or any third parties including but not limited to the Owner and the Architect, and their respective servants or employees for any costs or damages incurred on account of personal injury or death or property damage caused by, arising out of, or in any way incidental to, or in connection with the performance of the Work hereunder. This provision will be limited only to the extent required by law and shall survive the termination or expiration of the Contract. Refer to Section 01 7800 Closeout Submittals for additional requirements.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

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

*(Paragraph deleted)*

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

*(Paragraphs deleted)*

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 If the Contractor fails to satisfy or bond any filed liens against the Owner in the Performance of his contract.
- .6 disregards the instructions of the Architect or the Owner (when such instructions are based on the requirements of the Contract Documents);
- .7 breaches any warranty made by the Contractor under or pursuant to the Contract Documents.
- .8 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents.
- .9 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents.
- .10 fails or neglects to prosecute the Work in such a manner to reasonably assure completion within the contract time;
- .11 fails to keep the Project free from strikes, work stoppages, slowdowns, lockouts or other disruptive activity;

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished and the Contractor will be back charged for all costs incurred by the Owner.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.2.5** The Owner may take over the work for one of the reasons stated in sub-paragraph 14.2.1 after giving the Contractor and the Contractor's Surety, if any, three days' written notice. The Contractor will be back charged for costs incurred by the Owner.

### § 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

.2 that an equitable adjustment is made or denied under another provision of the Contract§ 14.4

### Termination by the Owner for Convenience

*(Paragraph deleted)*

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- .4 proceed to complete the performance of the remaining Work on the Contract which has not been so terminated

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, and any deposits or down payments which the Contractor has made pursuant to the Agreement which cannot, in the exercise of good faith and due diligence by the Contractor, be refunded or applied as a credit in the Contractor's favor to other charges, provided, however, that if such deposits or down payments are not refundable, Contractor shall assign the applicable contract, agreement, purchase order, etc. to the Owner who, at its election, may require performance of same. The Contractor hereby waives and forfeits all other Claims for payment and damages, including, without limitation, overhead and profit related to Work terminated by the Owner pursuant to this Section 14.4.

§ 14.4.4 In case of a termination pursuant to this Section 14.4, the Owner will issue a Construction Change Directive or authorize a Change Order, making any required adjustment to the Date of Substantial Completion and/or the sum of Contract monies remaining to be paid to the Contractor. The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) Claims which the Owner has against the Contractor under the Contract, and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum; multiplied by 15% representing the Contractor's overhead and profit.

§ 14.4.5 For the remaining portions of the Contractor's Work which have not been terminated pursuant to this Section 14.4, the terms and conditions of the Contract with the Owner shall remain in full force and effect. The Contractor shall continue to prosecute that portion of its Work that was not terminated pursuant to this Section 14.4.

### § 14.5 Limitation of Owner's Liability

§ 14.5.1 The Owner shall not be responsible for damages or for loss of anticipated profits on Work not performed on account of any termination of the Contractor by it.

§ 14.5.2 The Owner shall not be liable to the Contractor for punitive damages on account of any termination of the Contractor and the Contractor hereby expressly waives its right to claim such damages against the Owner.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

**§ 15.1.1 Definition** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. As is set forth in other provisions of this Contract, delay in the Contractor's ability to complete the work may, in appropriate circumstances, give rise to a claim for additional time, but will under no circumstances be the basis of a claim for damages.

*(Paragraphs deleted)*

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

### § 15.1.3 Notice of Claims

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ten days after occurrence of the event giving rise to such Claim or within 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

### § 15.1.4 Continuing Contract Performance

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

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

*(Paragraphs deleted)*

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

### § 15.1.6 Claims for Additional Time

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

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

*(Paragraphs deleted)*

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**§ 15.1.7 Waiver of Claims for Consequential Damages.** The timelines provided herein for the making of claims shall be a condition precedent to any payment for such claims or the granting of any extension of time. Failure of the Contractor to comply with the time and notice provisions of this Article shall be an absolute bar to making any payment to or extending the time of the Contractor for such claim. All claims of any type seeking any monies, or an extension of time shall be accompanied by full documentation. A claim submittal without full documentation shall be rejected by the Architect and, if not timely resubmitted within the original claim period, as set forth above, shall be waived. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

## **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. A decision by the Architect shall be required as a condition precedent to **the Owner making any payment or granting any extension of time on any claims** between the Contractor and Owner arising prior to the date final payment is due. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

*(Paragraph deleted)*

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

*(Paragraph deleted)*

### § 15.3 Mediation

*(Paragraph deleted)*

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to non-binding one day mediation, unless both parties agree to an extension.

§ 15.3.2 The parties agree that claims, disputes or other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof shall, before the commencement of litigation or a party availing itself of self-help remedies, be submitted to a third party neutral Mediator agreed to by both parties or, if the parties cannot agree, appointed by the American Arbitration Association, at a non-binding Mediation that shall not exceed one calendar day. The parties may be represented by counsel at the Mediation, but no party may engage the Mediator as its representative after the Mediation. Statements made and documents provided or exchanged as part of the Mediation shall be for settlement purposes only and subject the applicable rules or regulations that govern such matters. All mediation shall take place within 30 days of any demand for same of and cost shall be shared by both parties.

*(Paragraphs deleted)*

### § 15.4 Arbitration

§ 15.4.1 The Contractor and the Owner shall not be obligated to resolve any claim or dispute related to the contract by arbitration; any reference arbitration in the Contract Documents is deemed void. If a discrepancy is found in the Contract Documents, this paragraph shall be considered the final say.

*(Paragraphs deleted)*

## ARTICLE 16 - NO DAMAGES FOR DELAY

§16.1 Notwithstanding any other terms or conditions set forth in the contract documents, general or supplementary conditions, the Contractor agrees to make no claim for damages for delay in the performance of the work occasioned by any act or omission of the owner or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete the work, unless a delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. The Contractor hereby expressly assumes the risk of all such delays to the Work, unless the Contract Schedule is extended for excusable delays.

§16.2 Contractor agrees and acknowledges that payment for the work may have been obtained through obligations or bonds which have been sold after public referendum. In the event the work is suspended or canceled as a result of the order of any court, agency, department entity or individual having jurisdiction, or in the event the work is suspended or canceled due to the fact that a court, agency, department, entity or individual having jurisdiction has issued an order, the result of which is that the afore said obligations or bonds are no longer available for payment for the work, contractor expressly agrees that it shall be solely entitled to payment for work accomplished until a notice of suspension or cancellation is served upon the Contractor. Contractor expressly waives any and all rights to institute an action, claim, cause of action or similar for any damages it may suffer as a result of the suspension or cancellation of the work and/or its contract pursuant to this section.

# **Additions and Deletions Report for**

## **AIA® Document A201® – 2017**

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### **PAGE 1**

~~(Name and location or address)~~  
Edgemont Union Free School District  
HVAC Upgrades and Related Work  
High School Resource Building

...

~~(Name, legal status and address)~~Edgemont School District  
300 White Oak Lane  
Scarsdale NY, 10583

...

~~(Name, legal status and address)~~Fuller and D'Angelo, P.C.  
Architects and Planners  
45 Knollwood Road – Suite 401  
Elmsford, NY 10523

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...

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

...

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

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all of the Contractor's responsibilities as to all labor, parts, supplies, equipment, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items of cost or value needed to produce, construct, and fully complete the Contractor's Work identified by the Contract Documents.

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#### **§ 1.1.9 Miscellaneous Definitions**

**§ 1.1.9.1** The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising care, skill, and diligence required of the Contractor by the Contract Documents.

**§ 1.1.9.2** The term "any" in the Contract Documents shall be interpreted as "any and all" whenever one or more than one item would be applicable for completion of the Work.

**§ 1.1.9.3** Except as otherwise explicitly provided, the words "approved" or "approval" shall mean the written approval of the Architect or Construction Manager.

**§ 1.1.9.4** The term "as indicated" or "as shown" shall mean "as indicated in the Contract Documents."

**§ 1.1.9.5** The term "include" in any form other than "inclusive" is non-limiting and not intended to mean "all inclusive."

§ 1.1.9.6 The terms "furnish" and "furnish all materials," unless specifically noted otherwise, mean "pay for, supply and deliver to the job site all materials, systems, equipment, product, and/or other items so specified."

§ 1.1.9.7 The terms "install" and "furnish all labor," unless specifically noted otherwise, mean "pay for, perform all operations connected with installation of Work including unloading product to be installed, supplying all necessary equipment and rigs to do the Work, test, place in operation and service, and remove all packing material."

§ 1.1.9.8 The term "product" includes materials, systems, equipment, and other items to be incorporated into the Work.

§ 1.1.9.9 The term "provide," unless specifically noted otherwise, means "furnish, install, connect up, complete, test and place in operation and service."

§ 1.1.9.10 The term "replace" or similar term shall mean remove designated, damaged, rejected, defective, unacceptable, or nonconforming Work from the Project and provide new work meeting the requirements of the Contract Documents in place thereof.

§ 1.1.9.11 The Contract Time is the period of time specified in Article 3 of the Agreement for completion of the Work.

§ 1.1.9.12 The terms "manufacturer" or "supplier" mean any person or entity which contracts to furnish materials to a Contractor, Subcontractor, or any Sub-subcontractor for use at the site of the Project.

§ 1.1.9.13 Terms not otherwise defined herein shall have the meanings set forth elsewhere in the Contract Documents.

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. It is intended that all plumbing, mechanical, electrical, and other systems will be complete and in proper operation, and that all construction components, whether part of such systems or otherwise, will be complete and in compliance with accepted construction practice upon completion of the Work. Even if items are missing from the Drawings or Specifications, but are normally required for proper operation of plumbing, mechanical, electrical, and other systems, or to complete otherwise incomplete construction, or to meet governing code requirements, they shall be included by the Contractor, unless he sought and received contradictory interpretation or clarification from the Architect.

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§ 1.2.1.2 The Contractor and its Subcontractors shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation (1) location, layout, and nature of the Project site and surrounding areas, (2) existing building and site conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools, equipment, (5) Owner occupancy requirements and constraints, (6) site safety logistics plan and any phased construction plan and (7) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 1.2.1.2.

§ 1.2.2.1 The Work on the Project will be separated into individual and separate contracts. It is the intent of these requirements to include all items of Work for a complete Project in the separate contracts. The Contractor shall be responsible for understanding and knowing under which contract each item of Work is included.

§ 1.2.2.2 Each section or division of the Specifications has been assigned to one of the contract scopes. Where a section of the Specification is referenced in the contract scope, then any and all items necessary for the proper and normal installation of the item referenced in the Specification section shall be included whether specifically indicated in the Contract Documents or not.

§ 1.2.2.3 The reference of the "Specifications" regarding the division or separation of the work among types of trades or occupations is only for the suggested purpose of coordinating the work of the different trades, etc. but it shall be the Contractor's entire responsibility for the proper coordination and completion of all the Work described in the "Specifications" whether performed by the Contractor or its Subcontractors, if any. It shall be the Contractor's responsibility to settle definitely with each of its Subcontractors the portions of the Work, which each will be required to do and the Owner and Architect assume no responsibility whatever for any jurisdiction claimed by any of the trades involved in the Work. The Contractor shall provide each item listed, of quality noted and subject to the qualifications noted, and shall perform operations prescribed according to the conditions stated, including specified operations, processes or methods, furnishing all necessary labor, materials, equipment and incidentals required to complete the Work.

§ 1.2.2.4 The Contractor acknowledges that the coordination requirements and the construction schedule of this Project will require close cooperation and coordination between all Contractors on the Project site

§ 1.2.4 In the event of conflict, ambiguity and/or unclear circumstances between any of the requirements of the Contract Documents, the requirement that is most inclusive of the highest quality and/or of the highest cost shall govern. The Contractor herewith agrees that no extra compensation shall be awarded to it, since it herewith received specific instructions to the procedure and values of the Work.

§ 1.2.5 In the event of inconsistencies or discrepancies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of work or (2) comply with the more stringent requirements; either or both in accordance with the Architect's interpretation. Where the Contractor perceives a conflict, it shall inform the Architect and Owner thereof and request a decision from the Architect, which shall be promptly communicated by the Architect to the Contractor so as not to cause any delay in the performance of the Work. Any Work performed after perceiving the conflict and prior to resolution by the Architect shall be at the Contractor's risk. The terms and provisions of this Paragraph, however, shall not relieve the Contractor of any of the obligations set forth elsewhere herein.

- .1 The Contractor shall not scale Drawings. Dimensions on large scale drawings take precedence over dimensions on small scale drawings. The Contractor shall notify the Architect if additional dimensions are needed. The Contractor shall field verify all dimensions.
- .2 Before ordering any materials or doing any work, the Contractor and each Subcontractor shall verify measurements at the Project Site and shall be responsible for the correctness of such measurements. The Contractor shall confirm all dimensions by field measuring. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference that may be found shall be submitted to the Architect for resolution before proceeding with the Work.
- .3 If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for the approval by the Architect before making the change.
- .4 Certain portions of the Specifications are written in condensed outline form and omitted words are to be supplied by inference. Naming of an article or operations shall have the effect of stating "Contractor shall furnish, install and complete" said operation or article unless it is further qualified in the context in which it appears.
- .5 When reference is made to specifications of a manufacturer, trade association, governmental agency, reference standard or similar source (such as ASTM, ASA, AISC, ACI, etc.), such is made part of the Drawings and Specifications, having the force and effect as though reproduced therein, and upon entering into the Contract the Contractor acknowledges its familiarity with those pertaining to its Work. Furthermore, all Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others. All Work shall conform to the National Electric Code, New York State Uniform Fire Prevention and Building Code, and amendments thereto, New York State Energy Conservation Construction Code, State Education Department Manual of Planning Standards, New York State Department of Transportation, Office of Engineering, Standard Specification, Construction and Materials, latest edition, Life Safety Code – NFPA, and applicable City and State Building Codes and Authorities having jurisdiction. The date of the reference standard shall be the latest edition at the time of signing the Contract except as specifically indicated otherwise.
- .6 The Contract Drawings are intended to show the general arrangement, design, and extent of the Work and are partly diagrammatic. They are not intended to be scaled for any purpose, or to serve as shop drawings. The Contractor and its Subcontractors will cooperate with all other contractors and their

respective subcontractors in determining the construction of systems, running of pipe, and locating equipment. The Contractor agrees that the failure to repeat typical details, figures, or notes on all Contract Drawings or other Contract Documents will not be a basis for claims for additional cost or time.

- .7 Any necessary variations in routing or installation shall be made to conform to the intent of the Contract Documents without additional costs. Where there are intersections or obstructions involving ducts, piping, or any other equipment requiring offset of materials, the Contractor acknowledges that it gave particular consideration to clearances in advance of submitting its bid, and that no additional costs for these issues will be considered by the Owner.
- .8 If conflicting conditions or interferences develop, the Contractor and its Subcontractors will confer with the other contractors and their respective subcontractors whose work is affected to determine a solution acceptable to all interested parties. The suggested solution shall be submitted to the Architect for comment and, if necessary, written approval.
- .9 The Contract Documents intend a first class finished product of such character and quality as described in and reasonably inferred from the Contract Documents. The Contractor will perform its Work to be complete and operable, fitting with the work of other contractors and the Owner, and in compliance with best construction practices and the ordinances, codes, and regulations of all bodies or persons having governmental or regulatory authority over the Contractor and its Work.

**§ 1.2.6** Execution of the Contract by the Contractor is a representation that the Contractor has carefully examined the Contract Documents and the Project site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the Project site, the specific conditions under which the Work is to be performed, the areas of the Work which will cause a disruption to the necessary and proper operation of the facilities by the Owner, and all matters which may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all conditions and the Contract Documents will not be permitted.

**§ 1.2.7.1** The Contractor certifies that it is experienced and familiar with the requirements and conditions imposed during the construction of similar work in the area. This includes, but is not limited to, "out of sequence" or "come back" work for the removal of plant, equipment, temporary wiring or plumbing, etc. This "out of sequence" work may also include phasing of construction activities to accommodate the installation of the Work at various locations and orderly fashion and the completion of Work at various locations and/or levels at various times. This "phasing," "out of sequence," or "come back" work shall be done at no cost to other contractors, the Owner or Architect.

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. Neither the Owner, Architects or its agents are obligated to provide any available digital data or information to the contractor.

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Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as

otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Refer to Section 01 4216 for additional definitions.

...

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

## **§ 2.2 Evidence of the Owner's Financial Arrangements**

### **§ 2.2.1 Information and Services Required of the Owner**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately. Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for **the building permit**, necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. All other permits required from local agencies required for construction shall be paid for by the Contractor.

...

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

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

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

## **§ 2.3 Information and Services Required of the Owner**

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

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. Refer to Section 01 4216 for additional definitions.

...

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

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

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract ~~Documents,~~ Documents as determined by the Construction Manager or Architect, or (3) fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or (4) fails to remove and discharge (within seven (7) days) any lien filed upon Owner's property by anyone claiming by, through, or under the Contractor, or (5) fails to perform the Work in a safe manner and in compliance with all applicable health and safety requirements and the Contractor's site specific health and safety plan, or (6) disregards the instructions of the Architect or Construction Manager, as determined by the Construction Manager or Architect, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Such order or stoppage by the Owner shall not constitute grounds for termination by the Contractor under Article 14 and shall not be a basis for an extension of the Contract Time under Section 8.3 or Article 15.

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If the Contractor defaults or neglects or fails to continuously and diligently to carry out the Work in accordance with the Contract Documents ~~or in accordance with the Project schedule~~ and fails within a ~~ten-day~~ five-day period after receipt of notice from the Owner to commence and continue correction of ~~such default~~ any such default, failure or neglect with diligence and promptness, the Owner may, after such three (3) work day period, without prejudice to other remedies the Owner may have, correct such ~~default or neglect.~~ Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for deficiencies or defaults either with the Owner's own forces or by hiring another contractor to perform the Work that the Contractor is failing or neglecting to carry out. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, and defaults, including the Owner's expenses and compensation for the Architect's additional services and other expenses made necessary by such default, neglect, or failure. If current and future payments Such action by the Owner and amounts charged to the Contractor are both subject to prior consultation with the Architect, and shall be equally binding upon the Contractor's performance and payment bond surety. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. ~~If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~

§ 2.5.1 Where the Contractor's default and/or neglect to carry out its Work in accordance with the Contract Documents threatens the health, safety and/or welfare of the occupants of the Owner's facilities and/or threatens the structural integrity and/or preservation of the Owner's facilities, the Owner may proceed to carry out the Contractor's Work upon twenty-four (24) hours' notice of its intention to do so to the Contractor. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies and defaults, including the Owner's expenses and

compensation for the Architect's and its respective consultants' additional services and other expenses made necessary by such default, neglect or failure.

## **§ 2.6 Extent of Owner's Rights**

**§ 2.6.1** The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

**§ 2.6.2** In no event shall the Owner, Construction manager or Architect have any responsibility for the Contractor's construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work notwithstanding any of the rights and authority granted the Owner in the Contract Documents

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**§ 3.2.1.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.3 and shall promptly report in writing to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or the Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor knew or reasonably should have known of such error, inconsistency or omission and failed to report it as required by this Section to the Architect. If the Contractor performs any construction activity knowing it involves, or reasonably should have known it involves, a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear sole responsibility for the costs for correction.

**§ 3.2.1.2** The obligations of the Contractor under Section 3.2.1.1 and this Section 3.2.1.2 are for the purpose of facilitating construction by the Contractor and are not for the purpose of imposing an affirmative obligation on the Contractor to discover errors, omissions, or inconsistencies in the design information in the Contract Documents. The Contractor's review of the Contract Documents is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically so provided in the Contract Documents.

**§ 3.2.1.3** Failure by the Contractor to promptly report any errors, inconsistencies, or omissions in the Contract Documents discovered by the Contractor, or which the Contractor reasonably should have known or discovered, shall constitute a waiver by the Contractor of any claim that otherwise might result in a change in the Contract Sum or Contract Time.

**§ 3.2.1.4** The representations of the Contractor as set forth in these General Conditions shall survive expiration and/or termination of the Agreement.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The Contractor shall be presumed to have performed a detailed investigation of the Project site(s) to consider fully all conditions that may have a bearing on the Work and to have accounted for these conditions in its proposal. The Contractor is deemed to be a qualified expert in the systems and construction requirements of the Work of its Contract. The Contractor hereby specifically acknowledges and declares that the Contract Documents are full and complete, are sufficient to have enabled it to determine the cost of the Work, and that the Drawings, the Specifications, and all Addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, building codes, and regulations, and otherwise to fulfill all of its obligations under the Contract Documents. The Contractor shall take field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions

discovered shall be reported in writing to the Architect at once. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner. Except as to any reported errors, inconsistencies or omissions, and except as to concealed or unknown conditions, by executing the Agreement, the Contractor represents the following to the Owner and the Architect:

- .1 The Contract Documents are sufficiently complete and detailed for the Contractor to perform the Work required and to comply with all the requirements of the Contract Documents.
- .2 The Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedure and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to Work; (3) the requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require, shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.12.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Contractor may submit Requests for Information ("RFI") to the Architect to help facilitate the Contractor's performance of the Work. Prior to submitting each RFI, the Contractor shall first carefully study and compare the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared Coordination Drawings, and prior Project correspondence and documentation to determine that the information to be requested is not reasonably obtainable from such sources. The Contractor shall submit each RFI sufficiently in advance of the date by which such information is required in order to allow the Architect sufficient time to permit adequate review and response and to permit Contractor compliance with the latest construction schedule. The Contractor shall reimburse the Owner amounts charged by the Architect for RFI responses that in the opinion of the Architect were available from a careful review of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared Coordination Drawings, and prior Project correspondence and documentation.

**§ 3.2.4.1** RFIs are for requests on clarifications or questions on contract drawings and specifications, not contract terms, scheduling items, or general correspondence, nor, as a means to describe or request approval of alternate construction means, methods or concepts or substitution of materials, systems means and methods. The Contractor shall fill all RFIs out in accordance with the provisions of the Project Manual. The Architect shall not fill said forms out on the Contractor's behalf.

**§ 3.2.5** If the Contractor, during the progress of the Work, discovers any discrepancies between the Drawings and the Specifications, errors and/or omissions on the Drawings, or any discrepancies between physical condition of the Work and the Drawings, it shall immediately notify the Architect in writing who shall promptly adjust same. Whether or not an error is believed to exist, deviations from the Drawings and dimensions given thereon shall be made only after approval in writing is obtained from the Architect. Any work performed after such discovery without the approval of the Architect shall be at the Contractor's risk and expense

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

§ 3.2.7 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1, 3.2.2, 3.2.4, 3.2.5 or 3.2.6, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.1, 3.2.2, 3.2.4, 3.2.5 or 3.2.6, the Contractor shall pay such costs and damages to the Owner, including architect's, engineer's and attorney's fees, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 3.2.5 Except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions defined in Paragraph 3.2.4, by executing the Agreement, the Contractor represents the following:

§ 3.2.5.1 The Contract Documents are sufficiently complete and detailed for the Contractor to (1) perform the work required to produce the results intended by the Contract Documents and (2) comply with all the requirements of the Contract Documents, within the time permitted for the completion of the work.

§ 3.2.5.2 The Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform the work, use of materials, selection of equipment and requirements of product manufacturers will be consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to Work; (3) requirements of any warranties applicable to the work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the work.

§ 3.2.6 Building-In: Contractor(s) and sub-contractors shall note the parts and materials which must be built in as the work progresses, including but not limited to all templates, forms, sleeves, inserts, parts, blocks, anchors, etc. for all work throughout and shall furnish to or set for the Contractor for General Construction in time to prevent delay in the work. Contractors shall also comply with Section 01 7310 or Section 01 7000 Cutting and Patching.

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

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work, coordinating the work of its own forces and the work of Subcontractors engaged by it to perform the Work of the Project on its behalf. The Contractor shall supply to its own work forces, and Subcontractors engaged by it to perform portions of its Work, copies of the Drawings and Project Manuals for the work to be performed by such individuals/entities on its behalf. The Contractor shall be responsible to the Owner for the acts and/or omissions of the Contractor's employees, the Contractor's Subcontractors, the Contractor's material suppliers, and/or their respective agents and employees, and any other persons performing portions of the Work on behalf of the Contractor.

§ 3.3.3.1 The Contractor's obligations under the Contract Documents shall include, without limitation, the following:

- .1 Review of all specified construction and installation procedures with its employees and/or Subcontractors, including, without limitation, those recommended by manufacturers, prior to the commencement of the relevant portion of the Work to be performed.
- .2 Advising the Architect:

- .1 if a specified procedure deviates from best construction practice;
- .2 if following a procedure will affect any warranties, including the Contractor's general warranty; or
- .3 of any objections the Contractor may have to a procedure.
- .3 Proposing alternative procedures, as appropriate, which procedures shall be covered by the Contractor's warranty as described in Section 3.5 hereof.
- .4 The Contractor shall be responsible for organizing and conducting pre-installation conferences and must coordinate such conferences with the Architect.

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

**§ 3.3.5** The Contractor shall inspect all materials as delivered to the Project site and shall reject any materials that will not conform with the requirements of the Contract Documents when properly installed.

**§ 3.3.6** The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body having jurisdiction over the Project. Failure to obtain any permits, licenses or other approvals because of the failure of the Contractor to conform to this requirement shall not extend the Contract time, and the Contractor shall not be entitled to any increase in the Contract Sum therefore. In addition, any additional costs and/or expenses of any nature incurred by the Owner as a result of the Contractor's failure to conform to this requirement shall constitute a charge against the Contractor's Contract.

**§ 3.3.7 Shut Downs:** Such work as connections to existing sewers, plumbing, heating, and electrical systems shall be coordinated at a time agreeable to the Owner and the Architect, and shall be determined and agreed to well in advance of the actual performance of such work so as to interfere as little as possible with the operation and use of the Owner's existing facilities. Shut downs must be coordinated through the Owner or Architect. The continued uninterrupted operation of all facilities of the Owner's buildings is essential. If any existing facilities must be interrupted, the Contractor for the Work shall provide all necessary temporary facilities and connections necessary for maintaining these existing facilities at no increase in the Contract Sum except as otherwise specified. No mechanical, heating, plumbing, sprinkler, or electric service shall be interrupted at any time except as approved in advance by the Owner or when the buildings are not occupied and shall be coordinated with the Owner, as well as the Architect. All communication systems must be maintained without interruption. As much related work as possible shall be performed prior to shut downs, so as to minimize the period of shut down. All material, equipment, and manpower necessary in the performance of a shut down shall be on site prior to interruption of service.

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**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and timely pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Contractor is solely responsible for managing labor and labor relations, including labor disputes or concerted activity, direct or indirect, without any delays or interference with the work schedule and/or other contractors at the site. No delay in the performance of the Work shall be excused by reason of labor problems affecting the Contractor or any subcontractor. In the event of strikes or labor disputes by other separate prime contractors, or other contractors performing work for the Owner under other Contracts, each contractor shall continue with its work and provide all necessary manpower as required to maintain the schedule and completion dates of the project.

**§ 3.4.1.1** A shortage of labor in the industry shall not be accepted as an excuse for not properly manning the Project at each site.

**§ 3.4.1.2** The Contractor shall be responsible for the care and protection of all equipment and materials for its Work on the Project.

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

Change Directive. Any request by the Contractor to make modifications to the work or substitutions shall not in any way cause or result in the delay of the ordering of any materials or equipment or the scheduling of the Work. Any such request shall require a minimum of thirty days' notice to the Owner and Architect and shall include full documentation of all costs and the time necessary. The full cost of any request by the Contractor for a modification or substitution, including but not limited to the cost of fees for the review of such request by the Owner and Architect or legal counsel and any delay time, shall be borne by the Contractor. Refer to Section 01 2500 Substitution Procedures

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Should any disorderly, incompetent, or objectionable person be hired or employed by a Contractor, upon or about the premises of the Owner, for any purpose or in any capacity, he shall upon the request of the Architect, be discharged from the work, and not again be employed thereon without the written permission of the Architect.

§ 3.4.4 The Contractor warrants that it has good title to all materials used by it in, on or in connection with the Work. No materials or supplies shall be purchased by the Contractor or any of its Subcontractors that are subject to any chattel mortgage, conditional sale or other agreement by which an interest is retained by the seller.

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

§ 3.4.6 All mechanics employed on the Project shall be persons skilled in that work which they are to perform. Work will not be approved if it does not meet the quality of workmanship as called for in the Contract Documents. If this quality of workmanship is not exactly defined herein, it shall be assumed to be the best standards of workmanship for the trade.

§ 3.4.7 The Contractor shall only employ labor on the Project or in connection with its Work capable of working harmoniously with all trades, crafts and other individuals associated with the capital improvement work to be performed. The Contractor shall make every reasonable effort to avoid labor disputes and to insulate the Owner and Architect from the effects of labor disputes should any arise. There shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity at the Project for any reason by anyone employed or engaged by the Contractor to perform its portion of the Work. There shall be no lockout at the Project by the Contractor. The Contractor shall be responsible for providing the manpower required to proceed with the Work under any circumstance. For the purposes of this Section, every reasonable effort shall include, but not necessarily be limited to:

- .1 make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Architect or the Owner, any conflict between its Agreement with the Owner and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade;
- .2 requiring employees, Subcontractors, suppliers and others to use reserve gates which shall be established for the Project;
- .3 rearranging work schedules for the Contractor's Work or the work of its Subcontractors; and
- .4 including in Contractor's agreements with its Subcontractors the right to fully implement all provisions of this Section.

§ 3.4.7.1 In case the progress of the Work is effected by any undue delay in furnishing or installing any items or materials or equipment required pursuant to the Contract because of a conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive but in no case shall the amount of such change be charged by the Contractor to the Owner as an additional cost to perform the Work.

§ 3.4.7.2 The Contractor shall ensure that its Work continues uninterrupted during the pendency of a labor dispute.

§ 3.4.7.3 The Contractor shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes or strikes.

§ 3.4.8 The Contractor and its Subcontractors employed upon the Work will be required to conform with all labor laws and to all other laws, ordinances, and legal requirements now or hereafter applicable to the Work and/or the construction area.

§ 3.4.9 Employees of the Contractor or its Subcontractors whose work is unsatisfactory to the Owner or the Architect, or considered by them to be unskilled or otherwise objectionable, will be immediately dismissed from the Project upon notice from the Owner or the Architect. Those dismissed employees shall be immediately replaced by the Contractor so as not to delay progress of the Work and at no additional cost to the Owner.

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§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements ~~may be considered defective.~~ may, in Architect's or Owner's sole discretion, be considered defective. This warranty shall include all parts and labor both on and off the Project site, together with all necessary transportation and shipping charges. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. ). All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable manufacturer, except as otherwise provided in the Contract Documents. The Contractor shall perform the Work in strict accordance with the Contract Documents and best industry practices. The Contractor, at its expense, shall upon demand by the Owner or Architect remove and replace materials not meeting Specifications or materials failing to perform as represented or warranted by the manufacturer, regardless of whether incorporated into the Work. The Contractor shall promptly replace or correct any Work or materials that the Owner or Architect rejects as failing to conform to the requirements of the Contract Documents. The foregoing warranty obligations are not limited by the provisions of Article 12, and are in addition to and not in limitation of any other warranty set forth in the Contract Documents or otherwise prescribed by law. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In the event of a conflict between provisions of the contract documents, provisions providing for the longest warranty period shall apply.

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

§3.5.2.1 The Contractor agrees to assign to the Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the work and further agrees to perform the work in such a manner so as to preserve any and all such manufacturer's warranties.

§3.5.2.2 All new installations, assemblies, systems, equipment, and labor and materials installed by this Contractor shall be guaranteed against all defects and failures for a minimum period of 2 years from the date of final completion.

§3.5.2.3 For the above stated time periods from the date of final completion, the Contractor shall, at his own expense, promptly repair and put into first class condition any workmanship and materials in which defects may develop, and shall, at his own expense, promptly replace all defective equipment, apparatus, fixtures and materials, to the full satisfaction of the Owner.

§3.5.2.4 The date of final completion of all work shall be stated in writing by the Engineer/Architect, and as acknowledged in writing by the Contractor.

§3.5.2.5 During the guarantee period, the Contractor shall be responsible for all costs, incurred in making the defective work good, both for labor and materials, and for all resulting injuries and damages to the building and to equipment.

§3.5.2.6 The guarantee provided by the Contractor is in addition to any warranty provided by equipment and material manufacturer. The Contractor's guarantee period shall not negate the longer guarantee period provided by equipment and material manufacturers.

§3.5.2.7 The Contractor warrants good title to all materials, supplies and equipment installed or incorporated in the

work.

**§3.5.2.8** The Contractor for itself and its successors and assigns, warranties to the Owner and their successors and assigns:

- a. The Warranty shall remain in effect for a period of time specified by appropriate Divisions of Specifications.
- b. The Contractor will make good at its own cost and expense all defects and all damage caused to the Owner, in all Work and all trades required by the Contract Documents for Warranty Work. All corrections to defective Work shall be made at the convenience of the Owner.

**§ 3.5.2.9** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with and issuance of the Certificate of Substantial Completion.

**§ 3.5.2.10** Neither final payment nor provision in the Contract Documents nor partial or entire occupancy of premises by Owner shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibilities for faulty or defective materials or workmanship. **§ 3.5.3** Refer to Section 01 7800 Closeout Submittal for additional requirements.

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The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. **§ 3.6.1** The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**§ 3.6.2** Contractor shall pay all applicable local, state, federal and other taxes and licenses.

**§ 3.6.3.** The Owner is exempt from sales and use taxes for materials fully incorporated into the Work of the Contract as accepted and approved by the Architect. The Owner will take title to materials used in the Project in order to permit tax exemption. The Contractor shall pay all other sales, consumer, use and similar taxes incurred in connection with the Work provided by the Contractor. The Owner's exemption from sales and use tax does not apply to machinery, equipment, tools and other items purchased, leased, rented or acquired for the Contractor's use in part or entirely in connection with the Work. Upon request of the Owner or the Architect, the Contractor shall provide a bill of sale or other instrument indicating the quantities and types of materials purchased directly by the Contractor or Subcontractor for incorporation into the Work. Upon delivery of the materials to the Project sites, the Contractor shall mark or otherwise identify the materials to be incorporated into the Work. The Owner's tax exemption shall apply only to materials so identified and accepted.

**§ 3.6.3.1** Owner shall provide required exempt documentation when requested

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**§ 3.7.1** Unless otherwise provided Paragraph 2.2.1 in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall pay any costs or fees incurred to comply with such requirements, any fines or penalties imposed for failing to comply and any costs or fees incurred by Owner due to any failure to comply. If the Contractor fails to give such notices, the Contractor shall be liable for and shall indemnify and hold harmless the Owner including its Board of Education, the Architect and their respective consultants, employees, officials, officers and agents against any resulting fines, penalties, judgements or damages, including reasonable attorney's fees imposed on or incurred by the parties indemnified hereunder.

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**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or by the municipality in which the project is located or by

any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

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§ 3.8.2 Unless otherwise provided in the Contract Documents,

- ~~.1 — allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;~~
- ~~.2 — Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and Refer to Section 01 2100 Allowances for payments.~~
- ~~.3 — whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.~~

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

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent shall be at the site at all times when work is being performed and fluent in English, and be provided at all time with direct communications (cell phone) to all parties.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed ~~superintendent~~. superintendent including addresses and telephone numbers of the members of his organization who can be contacted in the event of an off-hours emergency at the building site. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. The Superintendent shall be changed upon request of the Owner for reasonable cause.

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§ 3.10 Contractor's Construction and Submittal Schedules Refer to Section 01 3216 or 01 3000 for additional

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

§ 3.10.1.1 All of the dates provided for in any of the schedules prepared by the Contractor and submitted to the Architect, including all milestone and submittal dates, shall be considered to be "time of the essence" and may not be changed or modified without the Owner and Architect's specific written approval.

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§ 3.10.2.1 All of the dates provided for in any of the schedules prepared by the Contractor and submitted to the Construction Manager and Architect, including all milestone and submittal dates, shall be considered to be "time of the essence" and may not be changed or modified without the Owner or Construction Manager's specific written approval.

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

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

§ 3.12.1.2 Refer to Section 01 3000 for additional requirements.

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

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**§ 3.13 Use of Site**

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

§ 3.12.11 Comply with Submittal Procedures. Section 01 3000.

**§ 3.13 Use of Site**

§ 3.13.1 The Contractor(s) shall have limited access to the site on the inside and outside of the building. Comply with other sections regarding limited access. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.13.3 The Contractor shall perform and shall ensure that all Subcontractors and suppliers perform all Work in a manner that permits reasonable access to the Project site and to all adjacent premises. The Contractor shall not, and shall not permit any Subcontractor or supplier to, conduct the Work in a manner that disturbs or that could be reasonably anticipated to disturb operations and persons located in or on portions of the site not affected by the Work. The occupied portion of any of the Owner's buildings shall always comply with the minimum requirements necessary to maintain a certificate of occupancy.

§ 3.13.4 Construction Rules and Regulations. The following rules and regulations shall be observed and enforced by all Contractors in connection with all phases of the Work:

- .1 In accordance with New York State law, smoking is prohibited anywhere on school property. Violators will be subject to arrest and/or fine of \$1,000 per occurrence. No alcoholic beverages or controlled substances are permitted on school property, and persons under the influence of alcoholic beverages or controlled substances may not enter in or remain on school property.
- .2 In accordance with the United States Gun-Free School Zones Act of 1994, no firearms are permitted within 1,000 feet of any school building, with certain limited exceptions as set forth therein. In addition to such limitations, no firearms shall be brought on school property without the Owner's express prior consent.

- .3 Appropriate protective gear (hard hats, safety shoes, goggles, etc.) are to be worn as required by OSHA standards, the New York State Department of Labor, and prudent practice. Shirts are to be worn at all times. No short pants are permitted.
- .4 Any person who uses inappropriate language, or who is disruptive to the school environment, will be banned from the site.
- .5 The Contractor's personnel shall not converse with school employees, students and or local residents.
- .6 All persons on the Project site will comply with all reasonable instructions regarding conduct and safety which are given by the Architect or the Owner's representative.
- .7 All construction materials shall be stored in a safe and secure manner. No deliveries will be allowed during school bus drop off or pick up hours as determined by the Owner. All deliveries shall be scheduled and coordinated with the Architect and the Owner's Security department. Unexpected or uncoordinated deliveries may be turned away by the Owner or Architect at the discretion or necessity of the Owner. The Owner's enforcement of this provision shall not be construed by the Contractor or Subcontractor as the basis for a claim of delay in time or monetary damages alleged to have been incurred as a result of refusal of delivery.
- .8 Use of the existing building facilities during construction is prohibited, specifically including toilet rooms, telephones and water fountains.
- .9 The Contractor's schedule shall allow for blackout dates during which no noisy Work will be allowed, as determined by the Architect and Owner. Contractors may consult the Owner's school calendar for all test and examination dates, but these dates are subject to change.
- .10 To gain access to the Work, entrances and parking areas will be designated by the Owner for the Contractor's use. Any vehicles or trucks in non-designated areas may be towed at the Contractor's expense. Gates shall always be locked unless a worker is in attendance to prevent unauthorized entry.
- .11 Should it become necessary to obtain access to the existing building during construction hours for measurements or other non-disruptive work, the Contractor shall be escorted by the Owner.
- .12 All persons must wear photo identification badges at all times while working at the site. Identification badges must be provided by each prime Contractor for their respective personnel, including subcontractors, consultants, visitors and others.
- .13 No asbestos containing products are to be used anywhere on this Project.
- .14 No lead containing products are to be used anywhere on this Project.
- .15 Asbestos manifests showing the locations of all known asbestos bearing materials are available in each building, and should be consulted prior to the commencement of any work, including but not limited to demolition.
- .16 Demolition is to occur only when the building is unoccupied. Dust partitions and negative air are to be installed prior to commencing demolition. The Contractor must obtain Owner or Architect approval on dust partitions and negative air prior to commencing demolition work. Debris shall be removed by using an enclosed chute or similar sealed system.
- .17 (a) Prior to the commencement of Work, the Contractor must submit construction plans, which show the location of dust particles, exhaust & fresh air fans and describe in detail the operation procedures during demolition and construction which may generate dust.  
(b) All entrances to classrooms shall be sealed with at least 6 mil. polyethylene sheeting to prevent dust created by demolition and construction work from entering the classrooms. Entrances and egress to the work zone shall be covered with a triple flap 6 mil. polyethylene doorway to allow access to the area without the release of dust. Contractors are additionally responsible for all debris and dust infiltrating adjacent and undisturbed areas of the building.  
(c) Shut down and lock out all electrical and HVAC in the work area. Cut, cap, and seal all duct work where it enters the work area from another space. All duct work and conduit within the space shall be removed during demolition work.  
(d) The Contractor shall install dust protection barriers and poly sheeting. There shall be no or minimum damage to adjacent surfaces. The Contractor is responsible to repair any damage to existing surfaces.
- .18 Painting or other chemical applications shall be done in the Owner's existing building only when it is unoccupied. Storage of chemicals and painting shall be outside the Owner's existing or new structures, and shall follow manufacturer's storage guidelines.
- .19 Oxygen or other gas containers shall be properly stored and secured per OSHA requirements, to the satisfaction of the Architect and Owner. Failure to do so will result in a \$250 back-charge, per occurrence.

- .20 The Contractor is responsible for cleaning its own materials and debris. Failure to maintain a clean work site daily will result in others performing the work at the Owner's request, and the Contractor will be back-charged for the cleaning cost plus construction administration fees. This may be done without the typical 3-day notice to the Contractor.
- .21 The Contractor must send a qualified representative, knowledgeable in the Project and authorized to make decisions on behalf of the Contractor, to every Project meeting.
- .22 The Contractor shall cooperate with the Owner's school principal and custodial staff; however, if any additional work is requested the Contractor shall not proceed unless written approval is received from the Owner's representative. The Contractor will not be compensated for any additional work performed without the Owner's prior written approval.
- .23 Deliveries sent to the Project site will not be signed for or unloaded by the Owner. They will be directed to the construction site and if no employee is on site, the delivery will be rejected, at the Contractor's expense.
- .24 The General Construction Contractor shall be responsible for managing dust and dirt. On the exterior, site shall be watered down frequently to prevent dust clouds from rising. Streets shall be maintained clean per the Owner's or Architect's request.
- .25 All hot tar roofing shall be installed after school hours or on weekends/holidays only. Kettles shall not be lit until all students have left the Owner's building.
- .26 Each Contractor shall submit a weekly work schedule indicating work days, work hours and manpower allocation.
- .27 No storage of materials will be permitted within the Owner's buildings at any time during construction. Contractors must provide exterior storage containers when required. The Contractor shall be responsible for securing appropriate space for its material with the Owner prior to delivery. Final location of storage containers shall be determined by the Owner. If insufficient space is available on the site, the Contractor shall provide local off-site storage, storage containers, etc. at its own cost and expense. Should any of the material stored on-site obstruct the progress of any portion of the Work or the Project, this material shall be removed by the Contractor without reimbursement of cost, from place to place or from the premises, as the Owner may direct.
- .28 The General Construction Contractor shall be responsible for maintaining all appropriate site safety signage.
- .29 The Contractor shall be responsible for protecting the Owner's property. All existing shrubs, trees, lawn fixtures, sculptures and miscellaneous equipment shall be protected at all times. Any removals or relocation of said objects, if allowed shall be as directed by Owner in writing.
- .30 The General Construction Contractor shall provide and service portable lavatories for the duration of construction as provided in the Contract Documents. Lavatories shall be serviced by the General Construction Contractor on a regular basis to maintain sanitary conditions.
- .31 The General Construction Contractor shall protect all existing roofs during construction and shall be responsible for any damage to roofs during construction. The General Construction Contractor shall make all repairs to any damaged areas, as required by the manufacturer of the roof system.
- .32 The General Construction Contractor shall be responsible for providing weather-proof protection over all rough openings, including windows.
- .33 Five (5) days after receipt of the Notice to Proceed, the Contractor shall provide two (2) copies of a videotaped recording of all existing conditions to the Architect. This taping shall provide a record of all existing buildings, grounds, exterior conditions and interior conditions. The Contractor shall schedule a representative of both the Owner and the Architect to be present at this taping. In the absence of this record, the Contractor shall be responsible for paying the costs associated with any and all repairs in an area where the Contractor is working or has worked, as may be deemed necessary by the Owner or the Architect.
- .34 Manufacturers Material Safety Data Sheets (MSDS) shall be available at the site for all products used in the Project.
- .35 No weapons are permitted on the Owner's property by law.
- .36 No Contractor, Subcontractor, nor any person on its behalf shall, in any manner, engage in discrimination, intimidation or harassment of any person on the Project site.
- .37 Proper attire is required for personal safety and clothing must not sexually explicit or contain messages of a vulgar nature, disrespectful of ethnic or religious groups, or which promote the use of tobacco, alcohol or drugs.

- .38 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.
- .39 The Contractor will ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work will be performed in such a manner that public areas adjacent to the site of the Work will be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor will use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work; or (2) the Owner's building in the event of partial occupancy, as more specifically described in Section 9.9.
- .40 The Contractor is required to protect its own Work and work areas, preconstruction, during construction and post construction.
- .41 During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.
- .42 The Contractor shall exert utmost care and diligence when working in or near any existing buildings or site work. The absence of protection around such items shall not excuse the Contractor from its liability to provide protection. Any damage to existing buildings, sitework or facilities shall be repaired and charged to the Contractor responsible for the damage.
- .43 The Contractor shall be responsible for the removal and replacement of existing ceiling tiles and grid in areas of the existing building where its Work is required and new ceilings are not scheduled for installation. In the event that the existing ceilings are damaged and cannot be replaced to the satisfaction of the Owner, the responsible contractor shall be liable for the costs of replacing in kind, the existing ceilings with new tile and grid.
- .44 The General Construction Contractor shall provide necessary and required security measures to adequately safeguard the construction site from vandalism and intrusion of unauthorized persons. The General Construction Contractor shall submit its means and methods of security to the Owner and Architect for review and comment. The Project site must be secured 24 hours a day, 7 days a week including holidays. The General Construction Contractor's failure to secure the site as required by this paragraph will result in the Owner engaging the services of such necessary personnel so as to provide such security. No notice will be given the General Construction Contractor of the Owner's intention to engage such security services and all costs and expenses associated with the Owner's security of the site in this regard will be back charged to the General Construction Contractor. While the Owner may have security guards patrolling the Project areas, the function of such security guards is not for the purpose of specifically guarding the Contractor's property or operations of work.
- .45 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the written consent of the Owner, which may be withheld in the sole discretion of the Owner.
- .46 Without limitation of any other provision of the Contract Documents, the Contractor will comply with all reasonable rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the buildings, as amended from time to time by the Owner.

**§ 3.13.5 Separation of Construction Areas from Occupied Spaces:** Construction areas which are under the control the Contractor and therefore not occupied by the Owner's staff or students shall be separated from occupied areas. Provisions shall be made by the Contractor to prevent the passage of dust and contaminants into occupied parts of the Owner's building. Periodic inspection and repairs of the containment barriers must be made to prevent exposure to dust or contaminants. Gypsum board must be used in exit ways or other areas that require fire rated separation. Heavy duty plastic sheeting may be used only for a vapor, fine dust or air infiltration barrier, and shall not be used to separate occupied spaces from construction areas. Methods of dust and fume control shall include, but not be limited to:

- .1 Adequate ventilation;
- .2 Wetting down;
- .3 Keeping bags of insulating materials, cement, etc. closed;
- .4 Controlled mixing of materials under field conditions;

- .5 Special attention should be used in sawing insulation and certain acoustical materials and storage of materials;
- .6 Job housekeeping must be maintained; and
- .7 Advising all personnel of hazardous conditions, including supervisors and workers.

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Refer to Section 01 01731 or Section 01 1700 for additional requirements.

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**§ 3.15.3** Prior to occupancy the Owner must perform custodial cleaning of the work area. If the Contractor has not removed construction debris, equipment, tool etc. which will prevent the Owner to perform custodial cleaning the Contractor will be back charged for additional cleaning costs incurred by the Owner.

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. Federal, state, and local agencies with jurisdiction over the Project shall at all times have access to the Work wherever it is in preparation or progress. The Contractor shall provide for such access so that such agencies may perform their functions. The Contractor shall allow access for all required tests and inspections.

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

**§3.18.1** Indemnity Agreement - Compliance with the foregoing requirements as to insurance shall not relieve the contractor from liability under the indemnity agreement set forth in the general conditions as amended

**§3.18.1.1** To the fullest extent permitted by law, and cause its Subcontractors to, defend, indemnify and hold harmless the Owner, Architect, and their consultants, officers, directors, board members, agents and employees of any of them (collectively, "Indemnitees," individually, "Indemnitee") from and against all losses, damages, liabilities, actions, causes of action, claims, demands, fines, penalties, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and disbursements) arising out of or resulting from (a) the breach of any terms, covenants, or conditions on Contractor's part to be performed under the Agreement or the Contract Documents, (b) performance of and/or failure to perform the Work, (c) any statutorily imposed liability for injury to employees or failure to comply with any laws or regulations affecting the Work, or (d) acts, omissions or misconduct of the Contractor, its Subcontractors and others for whom the Contractor is responsible, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or economic losses or damages, damage to or destruction of property, including without limitation damage related to water infiltration, and for environmental damage, or to injury to or destruction of tangible property and nuisance (including loss of use), but only to the extent caused by the acts, omissions, wrongful conduct or a breach of contract of the Contractor, a Subcontractor, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Nothing contained herein shall be construed to obligate the Contractor to indemnify, defend, and hold the Owner harmless for claims caused solely by the Owner's negligent acts or omissions.

The Contractor agrees to include the following indemnity provision in each and every contract it enters into with a Subcontractor, and to require that Subcontractor to include such provision in each contract it enters into with any lower tier Sub-subcontractor: "To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold

harmless the Contractor, Owner, Owner's Consultants, and the Architect's consultants, and each of their respective representatives, board members, employees, directors, officers, and agents, from and against any and all claims, suits, actions, damages, losses, fines, penalties, costs, charges and expenses, including but not limited to attorneys' fees and the costs of any proceeding, arising out of or resulting from any performance of or failure to perform the Work, acts or omissions of the Subcontractor, its lower-tier Sub-subcontractors, and others for whom the Subcontractor is responsible, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or economic losses or damages, damage to or destruction of property, and for environmental damage, or to injury to or destruction of tangible property and nuisance, but only to the extent caused by the acts or omissions or a breach of contract of the Subcontractor, a Sub-Subcontractor to Subcontractor, and any person or entity directly or indirectly employed by them or any person or entity for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder."

§3.18.1.2 In the event that any party is requested but refuses to honor the indemnity obligations hereunder, then the party indemnifying shall in addition to other obligations, pay the cost to the party requesting indemnification or seeking enforcement and enforcing this indemnity requirement including, but not limited to attorney's fees.

§3.18.1.3 In addition, to the extent not covered above, the contractor or subcontractor shall defend, indemnify and hold harmless the Owner, Owner's Representative, Architect, Architect's Consultants, and agents and employees of any of them, from any and all claims, losses, damages, suits, obligations, fines, penalties, costs, charges and expenses, which may be imposed or incurred by or asserted against any of them by reason of any act or omission of such contractor, or any subcontractor, or any person or firm directly or indirectly employed by such contractor with respect to violations of OSHA requirements, rules and/or regulations

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

§ 3.18.2.2 The Contractor's defense and indemnity obligations under this Section 3.18 shall specifically include all claims and judgments that may be made against the Indemnitees under the Labor Law of the State of New York, and similar laws of other state or governmental bodies having jurisdiction; and further, against claims and judgments arising from violation of public ordinances and requirements of governing execution of the Work.

§ 3.18.3 Claims by Governmental Authorities. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against claims, damages, losses, and expenses arising out of any claims made against the Indemnitees under the laws of federal, state, or other governmental bodies having jurisdiction over the Work, including but not limited to claims arising from violation of public ordinances and other requirements of governing authorities, due to the Contractor's method of execution of the Work or implementation of any of the Contractor's other obligations under the Contract Documents.

§ 3.18.4 Liens and Security Interests. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against any actions, lawsuits, or other proceedings brought against Indemnitees as a result of liens or security interests of any type arising from the Work and filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees.

§ 3.18.5 The Contractor shall further indemnify and hold harmless the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold harmless obligations under this Section 3.18 or as may otherwise be provided elsewhere in the Contract.

§ 3.18.6 Subject to Section 3.18.7, all obligations of the Contractor under this Section 3.18 to defend the Indemnitees are obligations to provide full defenses at the sole cost and expense of the Contractor, regardless of any alleged culpability on the part of any Indemnitee or any ultimate determination of relative shares of liability of any Indemnitee or limitation of the Contractor's indemnity obligations in light of such determination.

§ 3.18.7 To the extent any defense, indemnity, or hold harmless obligations under this Section 3.18 are made void or otherwise impaired by any law controlling their construction (including but not limited to laws limiting such obligations to the extent of the portion of damages caused by an indemnitor), such obligations shall be deemed to conform to the greatest rights to defense and indemnity permitted by such law (including but not limited to New York State General Obligations Law Section 5-322.1).

§ 3.18.8 All provisions of this Section 3.18 shall survive termination of the Agreement or final completion. No obligations under this Section 3.18 shall be construed to negate, abridge, or reduce other rights or obligations to defense and indemnity, including but not limited to common law indemnity, which would otherwise exist as to a party or person described in this Section 3.18.

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

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

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Refer to Section 01 3000 for additional requirements.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, ~~Directives~~ and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.8.1 Neither the Owner, Owner's Representative nor Architect may issue instructions to the Contractor to change the amount of the contract, except by properly executed Change Order.

§4.2.8.2 Instructions are issued by the Owner through the Owner's Representative or Architect, to the Contractor. The instructions shall not be carried out by the Contractor prior to a written order in the form of a change order, signed by the Owner, Architect and Contractor, authorizing a change in the Contract amount or an adjustment to the Contract Sum.

§4.2.8.3 No amount shall be payable by the Owner to the Contractor for performance of work without an executed change order. Comply also Article 7.

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

character than that shown or inferred by the Contract Drawings, it shall be the duty of the Contractor to so notify the Architect within five (5) days from receipt of same in order that proper adjustment may be made if found justifiable in the opinion of the Architect and the Owner. The Contractor shall assume full responsibility for all such work done without the approval of the Architect and the Owner

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**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, ~~as soon as practicable~~ Contractor within 10 days after award of the Contract, shall notify the Owner and Architect in writing, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. ~~Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~ Copies of all subcontractor contracts are to be provided to the Owner's Representative.

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**§ 5.2.2** ~~The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.~~ Each Contractor shall not award any work to any subcontractor or supplier without prior written approval of the Architect and Owner's Representative. Approval will not be given until Contractor submits to the Architect a written statement concerning the proposed award to the sub-contractor. The statement shall contain such information as the Architect or Owner's Representative will require..

**§ 5.2.3** ~~If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required, and Architect have no reasonable objections. No increase in the Contract Price shall be allowed where a subcontractor is rejected by the Architect or Owner who is deemed unqualified to perform the particular work subcontracted by the Contractor or having too many current projects handled by insufficient personnel.~~

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### **§ 5.3 Subcontractual Relations**

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

### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- ~~1—assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and~~
- ~~2—assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.~~

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

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

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

§ 5.2.5 Notwithstanding any other provisions of the Contract Documents, Contractor shall perform at least Seventy-five (75) % of the field work by its own employees.

§ 5.2.5.2 For the purpose of the preceding paragraph, any part of the work performed by supervisory personnel (persons above level of foreman) or by the office personnel and such items as bonds, certificates, shop drawings and similar items shall not be considered part of the percentage of work required to be performed by the Contractor's employees.

### **§ 5.3 Sub-Contractual Relations**

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The agreement between the Contractor and Subcontractor shall not provide, nor shall the Contract Documents be deemed to provide, any rights, remedies or redress by the Subcontractor(s) against the Owner.

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§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. Should any Contractor sustain any damage or delay through any act or omission of any other Contractor having a contract with the Owner for the delivery and/or the installation of materials, supplies, equipment, plant, or appliances, or should the Contractor sustain any damage or delay through any act or omission of a subcontractor, the Contractor shall have no claim against the Owner or their Architects for such damage or delay, but shall have a right to recover or to claim such damage only from the other Contractor or subcontractor.

§ 6.2.6 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15

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§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Change Orders shall be submitted in total amounts for a particular change not in installments for each trade thereafter. All partial change order submissions will be rejected and returned to each Contractor for completion.

...

§ 7.1.2.1 Field orders are an interpretation of the Drawings and/or Specifications which order minor changes in the Contractor's work which will not result in an increase or decrease in the Contract Sum. From time to time, the Architect may issue field orders to the Contractor. The work included in such field order shall be performed by the Contractor at no additional cost to the Owner and shall not form the basis for a claim for an extension of the Contract Time. Hence, the Contractor shall perform the work included in field orders so as to cause no delay to its Work and/or the work of other contractors engaged by the Owner in connection with the Project.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Additional work performed without authorization of a fully-executed Change Order will not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time. No course of conduct or prior dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment of the Owner, shall be the basis for any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. No amount shall be payable by the Owner to the Contractor for performance of work without a written and fully executed Change Order.

§ 7.1.4 When the Owner or Architect requests that the Contractor perform work which is not included in the Contract Drawings or Specifications and which will result in additional cost to the Owner, the Architect shall request that the Contractor submit its proposal for performing such additional work. The Contractor shall submit its proposal to the Owner and Architect for review. The Contractor's proposal shall include a complete itemization of the costs associated with performing its work including labor and materials. All proposals for any work that a Contractor, its Subcontractor(s) or Sub-subcontractor(s) perform in connection with additional work shall be properly itemized and supported by sufficient substantiating data, including but not limited to material descriptions, material quantities, material unit prices, labor trade listings, labor hour quantities, labor trade rates, equipment descriptions and equipment rates with a percentage allowance for overhead and profit.

- .4 In cases where allowances are shown on the bid form and accepted by the Owner, they shall be used to determine the amount of addition to or deduction from the Contract Price. The unit prices or allowances when mutually agreed to be fair and equitable by Owner and Contractor will be made part of the Agreement.

§ 7.2.1.1 Changes in the Work involving additional Work or deletion of Work effecting an addition to or subtraction from the Contract Sum shall not be made until the Contractor submits to the Architect the cost of the added or deleted Work with a complete and detailed listing of all Subcontractors involved, all materials, labor, overhead and profit and an appropriate Change Order has been issued. If requested, the Contractor shall submit detailed quotations for Subcontractors and material suppliers. Changes in the Work when not involving additions or deletions from the Contract Sum shall not be made until the Architect has issued an appropriate Change Order. All Change Orders must have the approval of the Owner and Architect in writing.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all Claims and other matters related to the change in Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change (including, without limitation, all costs of associated delay, interference, acceleration, inefficiency, overhead, as well as costs of material, labor and supervision), and any and all adjustments to the Contract Sum and the Contract Time. Payment of a Change Order shall constitute accord and satisfaction of all Claims of the Contractor in connection with the change or changes to the Contract addressed by the Change Order and it is understood and agreed that a signed Change Order shall be the complete and fully integrated agreement for all related costs and there are no oral or written understandings, reservations, representations or agreements, directly or indirectly, connected with the Change Order and not affirmatively stated on the signed Change Order. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payments as if such Work were originally part of the Contract Documents.

§ 7.2.4 Upon the Contractor's completion of the Change Order work, and prior to payment being made to the Contractor for such work, the Contractor shall provide the Owner with the following information:

- .1 Certified payrolls itemizing the labor actually utilized in connection with the Change Order work; and
- .2 Copies of invoices from its Subcontractors supplying work in connection with the Change Order work.

§ 7.2.5 Additional work performed without authorization of a Change Order will not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time, except as provided in Section 7.3, and except in the case of an emergency as provided in Section 10.4

§ 7.2.6 Final determination of all claims shall be by the Owner

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§ 7.3.1.1 If the Construction Change Directive involves an adjustment to the contract price, the adjustment will be computed by the Architect in form conforming to 7.3.3.5.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. In the event the Contractor and the Owner cannot agree on the sum by which the Contract Sum or the amount of time by which the Contract Time is to be increased or reduced based upon changes to the scope of the Work as described in Article 7, the Architect shall issue a Construction Change Directive reflecting the increase and/or reduction of the scope or price of the Contractor's Contract.

§ 7.3.2.1 If the Owner and the Contractor cannot agree that the requested Work properly forms the basis for a Change Order or on the sum by which the Contract is to be increased or reduced based upon changes to the scope of Work, the Architect shall issue a Construction Change Directive signed by the Owner and Architect reflecting the addition to, or deduction of, the scope of Work and the Contractor shall (a) in the case of additional work to be performed by the Contractor, perform such additional work in an expeditious manner so as not to delay the Work of the Contractor or other Contractors working at the site and keep records of its performance of such additional work, and (b) in the case of work to be deducted from the scope of the Contractor's Work, refrain from taking any steps in connection with the work associated with the deduction of the Contractor's Work. The Construction Change Directive shall include: (a) a description of the work being added or deducted from the Contractor's scope of Work; (b) the amount the Owner has determined to be the cost associated with the additional work or deduction of the scope of the Contractor's Contract until the Owner and the Contractor agree upon the increase or decrease in the Contractor's Contract Sum, or until a claim filed by the Contractor has been determined; and (c) the extent to which the Contract Time will be adjusted as a result of the change in the scope of Work. Any claims must be filed in accordance with the requirements set forth in Article 15 of these General Conditions. Failure to timely file any claim in accordance with requirements set forth therein shall constitute a waiver of such claim.

...

- .2 Unit prices stated in the Contract Documents ~~or subsequently agreed upon~~; Section 01 2100 or subsequently agreed upon (unit prices shall be deemed to include all costs and expenses for the Contractor's changed Work, including costs of general conditions, insurance/bonds and overhead and profit attributable to the change);

...

.4 As provided in Section 7.3.4, All additions and deductions to the Contract Price not covered by unit prices resulting from changes in the Work shall be determined by the following outline:

.5 CONTRACT WORK

a. Materials (Itemized Breakdown)

b. Rent of Equipment (Listed separately)

Sub-Total #1 (items (a & b))

c. Sales Taxes (where applicable on Sub-Total #1)

d. Labor (Itemized Breakdown)

e. Insurance (Workmen's Compensation

Social security or as otherwise

required and/or specified)

Sub-Total #2 (items c, d & e)

f. Overhead & Profit (% x Sub-Total #2)

As per Article 7.3.

g. Sub-contract Work

(If applicable, in identical breakdown,

as shown above Sub-Total #1 & 2)

h. Contractor's overhead & profit

on sub-contract changes (5%)

Sub-Total #3 (items f, g & h)

i. TOTAL QUOTATION (Sub totals 1, 2, 3)

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§ 7.3.3.1 Change Orders shall be submitted in total amounts for a particular change, not in installments for each trade thereafter. All partial change order submissions will be rejected and returned to the Contractor for completion.

.1 Overhead and profit combined, included in the total cost to the Owner, shall be based on the following schedule:

For the Contractor, for any Work performed by the Contractor's own forces, ten percent (10%) of the cost.

For the Contractor, for Work performed by Contractor's sub-contractor, five percent (5%) of the amount due the sub-contractor.

For each sub-contractor or sub-contractor involved, ten percent (10%) of the cost

.2 Cost to which overhead and profit is to be applied shall be limited to the following:

Labor.

Cost of Materials, including sales tax and cost of delivery.

Workers' or Workmen's Compensation Insurance.

Rental value of equipment and machinery.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect; unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

- ~~3~~ — Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- ~~4~~ — Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- ~~5~~ — Costs of supervision and field office personnel directly attributable to the change. § 7.3.4.1 In order to facilitate checking of quotations for extras or credits, all proposals, shall be accompanied by a complete itemization of costs including labor, materials and sub-contracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are sub-contracts, they shall be itemized also. All change orders without such itemization will be returned to the Contractor for resubmission

...

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15. Failure to timely file any claim in accordance with the requirements set forth therein shall constitute a waiver of such claim.

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**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for ~~Work~~ Work, not in dispute and completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

...

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. §7.4.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. The work included in such order shall be performed by the Contractor at no additional cost to the Owner and shall not form the basis for a claim for an extension of the Contractor's time to complete its Work. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall perform the work included in such orders so as to cause no delay to its Work and/or the work of other contractors engaged by the Owner in connection with the Project

**§7.4.2** Minor Changes in the work are not to be construed as Change Orders. A signed minor change is not an approved change order.

...

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed or extended by the failure to act of the Contractor or persons or entities for whom the Contractor is responsible to act.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of final completion is the date certified by the Architect and Owner in accordance with Section 9.10. Unless otherwise agreed in writing by the Owner, the Contractor agrees that final completion shall occur not more than thirty (30) calendar days after the date of Substantial Completion.

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§ 8.1.5 Dates indicated in Section 01 1000 Summary of Work or Section 01 11010 Milestone Schedule are dates critical to the Owner's operations that establish when a part of the work is to commence or be complete. All Milestone Dates are of the essence and shall have the same meaning as Substantial Completion for the purpose of Liquidated Damages in this Article 8. Liquidated damages applied to Substantial Completion shall apply to Milestone Dates.

...

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and ~~Owner~~ Owner and the Owner's approval of such insurance. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Work can not start until the required insurance and bonds are provided and the Contract has been executed.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified and, further, to provide such protections as may be necessary. It is expressly understood and agreed by the Contractor that the time for the completion of the Work is a reasonable time for its completion, taking into consideration the average climatic range and usual weather conditions prevailing in the Project's locality.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by ~~changes ordered in the Work;~~ (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by ~~delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the control or (3) by other causes that the Architect determines, justify delay,~~ then the Contract Time shall be extended for such reasonable time as the Architect may determine. No extension of time will be granted for changes in the work or labor disputes, or work stoppage due to asbestos removal. This paragraph shall control where a conflict appears among the contract documents.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Paragraph 8.3.1, shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the work, (3) loss of productivity, or (4) other similar claims (collectively referred to in this Paragraph 8.3.3 as delays) whether or not such delays are foreseeable, unless a delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the work, or directing suspension, rescheduling or correction of the work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the work.

#### **§8.4 LIQUIDATED DAMAGES**

**8.4.1** Contractor realizes that time is of the essence on this Contract and the date of Substantial Completion shall be no later than the date set forth in Article 3.2 of the Contract. The Contractor understands that substantial disruption of the Owner's educational process will occur if the project is not completed by the date of substantial completion. In the event the Contractor fails to substantially complete the work under this contract by said scheduled date(s), the sum per calendar day, as follows:

Contractor

\$750.00

and will, at the sole discretion of the Owner, be subtracted from the payment due the Contractor (or, if the amount due the Contractor as Payment is insufficient, any deficiency shall be paid by the Contractor to the Owner), except in cases where a delay is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, or delays of Subcontractors or Suppliers due to such causes. Delay in acquisition of materials other than by reason of or freight embargoes will not constitute a delay excusable under this provision unless approved by the Owner in writing.

**§8.4.2** Within five calendar days from the occurrence of any such delay, the Contractor shall notify the Owner, in writing, of the cause of delay. The Owner will ascertain the facts and extent of the delay, and extend the time for completing the Work when, in his judgment, the findings of fact justify such an extension. Owners findings of fact will be final.

**§8.4.3** In addition to Liquidated Damages, the Contractor shall be liable for all additional costs incurred by the Owner due to the failure of the Contractor to complete each Phase as required. The additional costs shall include but not be limited to the following:

**§8.4.3.1** Staff, as required, to make the facility accessible to the contractor; for the Architect and Consultants to perform inspections after the completion date of each phase. Expenses and costs incurred by the Owner for additional services of the Owner's Representative, in addition to additional inspections.

**§8.4.3.2** The cost of additional inspections by the Architect and their consultants will be at the rate of \$300.00 per hour.

**§8.4.4** The said sum per calendar day and additional costs set out above, shall constitute the Liquidated Damages incurred by the Owner for each day of delay beyond the agreed upon dates of substantial completion. Such Liquidated Damages shall be in addition to any other damages (other than reason of delay) Owner may incur as a result of Contractor's breach of Contract, to include those which may be incurred pursuant to of the General Conditions.

**§8.4.5** In addition to the liquidated damages described above, in the event the Contractor fails to complete all work under this Contract by said Scheduled Dates, the Contractor will, at the sole discretion of the Owner, not be permitted to perform any work during normal hours. Such work shall only be performed after hours, Saturdays, Sundays, holidays or periods when the facility is unoccupied, at no additional cost to the Owner. This paragraph in no way limits any other rights, or remedies of the Owner under this Contract.

**§8.4.6** All costs will be subtracted from payment due the Contractor (or, if the amount due the Contractor for payment is insufficient, any deficiency shall be paid by the Contractor to the Owner.

**§8.4.7** This section shall in no way prevent the Owner from enforcing any other remedies it may be entitled to pursuant to the Contract, including the right of termination, and in the cases of termination, any damages suffered by the Owner shall not be considered damages by reason of delay, regardless of the reason for termination.

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**§ 9.1 Contract Sum** (Refer to Section 01 2000 Price and Payment Procedures for additional requirements)

...

**§ 9.1.2** If unit-Unit Cost Allowances prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities

causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. Refer to Section 01 2100.

**§ 9.1.3** Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payments to the Contractor if and for so long as the Contractor fails to perform any of its obligations or otherwise is in default under any of the Contract Documents; provided, however, that any such hold back shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor.

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

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

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

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

**§ 9.3.2.1** All materials and equipment, including materials and equipment stored on-site but not installed, or stored in secured warehouse) will require a bill of lading showing the exact value. upon which partial payments have been made shall become the property of the Owner, but the care and protection of such materials and equipment shall remain the responsibility of the Contractor until incorporation and approved into the Work, including maintaining insurance coverage on a replacement cost basis without voluntary deductible.

Notwithstanding payment by the Owner, all warranties and/or guarantees required by the Contract Documents shall not begin to run until the Contractor has completed its Work.

**§ 9.3.2.2** In no case will more than 90% be approved if the item is not installed. Insurance certificates will be provided specific to materials stored (for on-site or offsite items).

**§ 9.3.2.3** When Fuller and D'Angelo, P.C. or Owner's Representative requires substantiating information, submit data justifying dollar amounts in question. Provide one copy of data with cover letter for each copy of submittal. Show application number and date, and line item by number and description.

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**§ 9.3.4** Application for all Payments must be accompanied by certified payroll records and all releases of liens for previous applications **from Contractor and their subcontractors** and a sworn and notarized statement that all subcontractors have been paid to at least 95% of previously requisitioned sums. In the event a lien is filed on the Owner's property, by any entity, due to the actions of the Contractor, regardless of the relationship between the lien and the work performed on this project all payments will be held in abeyance until such lien is bonded or removed.

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

whole or in part as provided in Section 9.5.1;

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- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure to comply with scheduled milestone or submittal dates.
- .9 damages resulting from the Contractor's failure to notify the Architect of errors or inconsistencies between and among the Contract Documents;
- .10 failure of the Contractor and/or its Subcontractors to comply with the requirements for maintaining record drawings.
- .11 the Architect's discovery or observation of work which has been previously paid for by the Owner which is defective and/or incomplete.
- .12 such other acts and/or omissions by the Contractor in connection with the performance of its Work that do not comply with the Contract Documents; or
- .13 the amount requested exceeds the percent completion of work on the Project site(s).
- .14 receipt by the Owner of a notice of withholding from the New York State Department of Labor or other administrative agencies having jurisdiction over the Project;
- .15 failure to comply with applicable federal, state or local statutes, regulations, and/or laws, including, without limitation, laws applicable to the provision of certified payrolls;
- .16 failure of the Contractor to provide executed performance and payment bonds and a current certificate of insurance;
- .17 damages caused to the Owner, the Construction Manager, the Architect, Separate Contractor or other Contractor as a result the Contractor's performance of its Work;
- .18 the Architect's discovery or observation of work which has been previously paid for by the Owner which is defective or incomplete;
- .19 the amount requested exceeds the percent completion of Work on the site; or
- .20 breach of this Agreement.

Notwithstanding the extent to which the Architect certifies an Application for Payment, the Owner shall have the right to withhold payment, in whole or in part, should the Owner determine that any of the grounds set forth in this Section 9.5.1 do in fact exist. If the Owner withholds payment, in whole or in part, the Owner shall promptly provide to the Contractor and Architect a written explanation of the reason(s) for which payment is withheld and shall promptly pay, in accordance with the Contract Documents, all amounts which are not in dispute.

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**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. ~~Refer to Section 01 2000 Price and Payment Procedures for additional requirements.~~

**§ 9.6.1.1** Payment Period: Submit at intervals stipulated in the Agreement but not more than one per month.

**§ 9.6.1.2** Form to be used: AIA G702 and AIA G703.

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

...

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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

**~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~**  
**§ 9.7.1** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within ten business days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty business days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon ten additional business days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received.

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**§ 9.8.1.1** Contractor shall advise the Construction Manager and Architect of pending insurance changeover requirements.

**§ 9.8.1.2** Contractor shall obtain and submit releases permitting Owner's Representative and Architect unrestricted use of the Work and access to services and utilities. Include occupancy permits, operating certificates, and similar releases

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

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's Representative and Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct

such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner's Representative and Architect to determine Substantial Completion. **If the Architect is required to inspect the Contractor's work more than twice, the Contractor shall be back charged for the cost of the Architect's services for the additional inspections.**

**§ 9.8.3.1** Certificate of Substantial Completion will be issued only after completion of all punch list items or Owner's Representative and Architect will notify Contractor of items, either punch list or additional items identified by Architect, that must be completed or corrected before a certificate will be issued. After completion of all punch list items submit the following:

- .1 Application for Payment showing 100 percent completion for portion of the Work claimed as substantially completed.
- .2 Manufacturer's Warranties/guarantees.
- .3 Contractor's Warrantee **Two (2)** years minimum and extended warranties.
- .4 Maintenance agreements, if any.
- .5 Manifest for disposal of Hazardous Material.
- .6 Manifest for disposal of material.
- .7 Test/adjust/balance reports and records.
- .8 Maintenance Manuals and Instructions Manuals
- .9 Signed Receipt by Owner's Representative of spare parts and attic stock.
- .10 Meter readings
- .11 Start-up performance reports.
- .12 Changeover information related to Owner's occupancy, use, operation, and maintenance.
- .13 Advice on shifting insurance coverage.
- .14 Final progress photographs.
- .15 List of incomplete Work, recognized as exceptions to Architect's "punch list".
- .16 Removal of temporary facilities and services.
- .17 Removal of surplus materials, rubbish and similar elements.
- .18 As Built Drawings.
- .19 Project Record Documents.
- .20 DOL Final Completion Form. (PW 200).
- .21 This application shall reflect Certificates of Partial Substantial Completion issued previously for Owner occupancy of designated portions of the Work.

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**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. **The Contractor understands that no retainage will be paid until all work, including punch lists items are complete and submission of all closeout documents as listed in Section 01 7800 Closeout Submittals are approved.**

...

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

...

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner's Representative and Architect will promptly make such inspection. When the Owner's Representative and Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Owner's Representative and Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The

Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.1.1** If the Contractor's Work is not accepted by the Architect after final inspection and additional time is required to complete items identified during the final inspection, the date starting the warranty periods described in the Contract Documents shall be set by the Architect at his discretion, but no later than the date of the Final Certificate for Payment.

**§ 9.10.1.2** If the Architect is required to perform more than one final inspection because the Contractor's Work fails to comply with the requirements of the Contract Documents, the amount of compensation paid to the Architect by the Owner for additional services shall be deducted from the final payment to the Contractor.

**§ 9.10.2** Neither final payment nor any ~~remaining~~ retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) completion of all "punch list" items, (6) submission of all closeout documents as listed in Section 01 7800 Closeout Submittals (7) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6) (8)~~ (8) Architect's punch list certifying all punch list items have been completed with each item signed off by the Owner's Representative and Contractor. and (9) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.2.1** It is understood by the Contractor that the maximum payment due the contractor prior to final payment shall be Ninety (95%) of the Contract amount and the final Five (5%) will be due only after the above is satisfied.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment ~~shall~~ may be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising ~~from~~ from:  
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.5 defective work or concealed conditions.

...

## **§ 9.11 APPLICATIONS FOR PAYMENT WHEN BEHIND SCHEDULE**

**§ 9.11.1** When the project falls behind schedule the contractor shall demonstrate the actions to be taken to put the project back on schedule.

**§ 9.11.1.1** Payments will not be approved until satisfactory evidence is presented to put the project on schedule

## **§ 9.12 APPLICATION FOR PAYMENT AFTER SCHEDULED COMPLETION DATE**

§ 9.12.1 In the event the work is not completed by the schedule date, listed in Section 01 1000 - Summary, and in addition to the other remedies described, the Architect will not review progress payment requisitions submitted after the construction completion date, and the Owner will not issue any progress payments after that date, until all work is completed.

§ 9.12.2 Only one requisition for work performed, after the construction completion date, may be submitted, and it may be submitted only when all work is complete and a Punch List inspection is conducted; said requisition may be submitted when the work at 100% complete, less 5% retainage.

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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Prior to beginning any work, the Contractor shall submit a copy of its safety plan to the Architect. The Contractor shall make the participation of its Subcontractors in its safety plan and program mandatory. The Contractor and its Subcontractors shall conduct their operations in accordance with the Safety Guides for Construction issued by New York State Education Department ("SED") and the Contractor's Safety Plan and Program.

...

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction-construction; and
- .4 The work on the project of any other contractors or any property of any other contractors work on the project

§ 10.2.1.1 The Contractor shall maintain at the project site MSDS documentation for all material brought on site.

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

- .1 The work on the project of any other contractors or any property of any other contractors work on the project;
- .2 shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement during construction.

§ 10.2.2.1 Any and all fines or citations levied against the Owner, Architect, or Owner's Representative due to the failure of the Contractor to comply with statutes, ordinances, codes, rules, regulations, or lawful orders of any governing authority, shall be paid for by the Contractor. This shall include any interest or late charges which accrue due to the Contractor's failure to remit payment upon receipt of such levies.

§ 10.2.2.2 Any reference made to rules and regulations promulgated by various governmental agencies with the Specifications or Construction Drawings are for the Contractor's benefit. The issuance of compliance to said regulations by workers employed by the Contractor or by sub-contractors is the sole responsibility of the Contractor; and that, notwithstanding any reference to any rule or regulation, that the Architect, the Architect's construction observer (Clerk-of-the-Works) or any representative of the Owner is not assuming any duty to provide supervision of construction methods in processes.

- .1. Each Contractor shall assign one person from his staff to be on-site safety coordinator.
- .2 Each Contractor is solely responsible for overall job site safety, the safety of his employees and the conduct of his work and that of his sub-contractors.
- .3 Each Contractor affirms he is fully versed in all State, Federal and local regulations pertaining to safety including OSHA regulations, and pertaining to any and all construction operations
- .4 All site personnel have appropriate Department of Labor certification.

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§ 10.2.3.1 The Contractor shall be responsible for all costs incurred by the Owner caused by false security alarms and false fire alarms set off by the Contractor, its Subcontractors, employees, suppliers, officers, directors or servants.

§ 10.2.3.2 All safety equipment including but not limited to hard hats and other personal protective materials and equipment (masks, face shields, gloves, etc.) required for the Contractor to perform its work are to be supplied by the Contractor and/or its Subcontractors.

§ 10.2.3.4 The Contractor acknowledges that the Labor Law of the State of New York, and regulations adopted thereunder, place upon both the Owner and Contractor certain duties and that liability for failure to comply therewith is imposed on both the Owner and Contractor regardless of their respective fault. The Contractor hereby agrees that, as between the Owner and the Contractor, and to the extent permitted by law, the Contractor is solely responsible for compliance with all such laws and regulations imposed for the protection of persons performing the Contract. For additional indemnity obligations see Section 3.18 of these General Conditions.

§ 10.2.3.5 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

§ 10.2.4.1 When use or storage of hazardous materials or equipment or unusual construction methods are necessary to promulgate the Work, the Contractor shall give the Owner's Representative reasonable advance notice, and shall maintain on the site, a full set of safety instructions relating to all such materials.

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

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

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

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

(other than the Work itself), ~~except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable. .

...

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

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.

...

**§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 the Owner or 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. All policies shall be provided by insurers licensed to conduct business in New York State.

**§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** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to conduct 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.
- .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.

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

#### §11.1.2 Certificates of Insurance:

- .1 Each certificate shall include the following clause: 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 Architect 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, Owner's Representative, their respective 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.
- .4 The Contractor and each of its Subcontractors and to all Shared Services Contracts (Purchase Order Agreements) shall include the Owner, Architect, 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.
- .5 Additional Insured status shall be provided by ISO endorsement CG 20 38 04 13, CG 220 38 and CG 20 37. A completed copy of the endorsements must be attached to the Certificate of Insurance.
- .6 A copy of the endorsement(s) providing additional insured sections must be attached to the Certificates.
- .7 A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/15) must be included with the certificates of insurance. For any "Yes" answers on Items G through L on this Form– additional details must be provided in writing.
- .8 Shall use the forms adopted and/or required by the New York State Workers' Compensation Board for proof of Workers' Compensation and NYS Disability Insurance, an ACORD certificate is not acceptable proof.
- .9 Renewal Certificates of Insurance: Renewal Certificates of Insurance must be filed with the Owner, Owner's Representative, Architect at least five (5) days prior to the expiration of any policy

§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.

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

§11.1.4 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 Insurance: Statutory Workmen's Compensation Insurance (C-105.2 or U-26.3) and NYS Disability Insurance (DB-120.1)** for all employees 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 Insurance for all of the employees to be engaged in such work. Provide Statuary Limits and Coverages. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.
- .2 **Employers Liability Insurance:** Not less than \$1,000,000 for all employees to be engaged in work on the Project.
- .3 **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:	\$2,000,000.00.
Products and Completed Operations	\$2,000,000
Personal Injury:	\$1,000,000.00.
Fire Damage Legal:	\$50,000.00.
Medical Payment:	\$10,000.00
(General Aggregate to apply on a per project basis).	
Other Requirements: No Explosion, Underground, Collapse (XCU) exclusions.	

**.4 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.

**.5 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 vehicle es 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

**.6 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.

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

**.8 Self-Insured Retention** \$10,000.00 per occurrence.

**.9 Owner Contractor Protective Liability Insurance (OCP):** The Contractor shall purchase and maintain an Owner's Protective Liability policy naming the Owner, Owner's Representative, 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 for project up to 1,000,000.:	\$1,000,000.00 each occurrence.
	\$2,000,000.00 aggregate

Limits of Liability for project over 1,000,001:	\$2,000,000.00 each occurrence
	\$4,000,000.00 aggregate

**.10 Asbestos/Lead/Hazardous Materials Liability Insurance :** With coverage for the services rendered for the Owner, 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: Statuary

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

Employer's Liability: \$100,000

Said policy shall be endorsed to indicate that the term "Insured" shall include the "Owner" Owner's Representative, and Architects 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 Architects 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:

**.11 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 subcontractors 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.

**.12 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 shall provide to the Architect 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.

**.13 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 subcontractors and suppliers.

**.14 Testing Company Errors and Omission Insurance:** \$1,000,000 per occurrence/\$2,000,000 aggregate for the testing and other professional acts of the Contractor performed under the Contract with the Owner.

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

**§11.1.5 Subcontractors Insurance:** The Contractor agrees to provide all subcontractors 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.

**§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 Architect for a period of 2 years from the date of final acceptance.

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

**§11.1.7** 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 Architect.

§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 and Architect 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 and Architect. 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, Architect and the Contractor shall obtain and record like certificates from his subcontractors

§11.1.14 Insurance Carriers: All insurance carriers providing coverage on the project must be **licensed** to conduct business and issue the type of insurer the carrier is providing to the Contractor in the State in which the project is located, and in the State in which the Contractor is domicile. The companies must be **A. M. Best "Secured"** rated or better. This requirement applies to all subcontractors 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 this project, at the election of the Owner, the contract maybe 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 subcontractors. Said policy shall be endorsed to indicate that the term "Insured" shall include the Owner, Construction Manager, Architect 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 and Architect.

§11.1.19.1 In the event that any of the insurance coverage to be provided by the Contractor to the Owner and Architect contains a deductible, or the insurance provided by the Owner and Architect contains a deductible, the Contractor shall indemnify and hold the Owner and the Architect harmless from the payment of such deductible, for all claims arising from any acts or omissions of Contractor or Contractor's officers, directors, employees, Subcontractors, suppliers or any others engaged by Contractor directly or indirectly to perform Contractor's Work on the Project, which deductible shall in all circumstances remain the sole obligation and expense of the Contractor

**§ 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 written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner or Owner's Representative 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.

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

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

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

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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 and Owner's Representative for loss of use of the Owner's property, due to fire or other hazards however caused.

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§ 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 Owner's Representative, 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.

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

...

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's Representative and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion, the Contractor, a subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner

...

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

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

§ 12.2.2.3 The ~~one year~~ two year period for correction of Work shall ~~not be~~ extended by corrective Work performed by the Contractor pursuant to this ~~Section 12.2.~~ Section 12.2 except as to the corrective work performed and subject to the continued existence of any manufacturer's warranty, if applicable.

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If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. § 12.3.1 If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

...

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. § 13.1.1 This Contract shall be governed by and interpreted in accordance with the substantive laws of the State where the Project is located without recourse to principles of choice of law The venue of any dispute resolution proceedings or actions shall be in the county in which the Project is located.

§ 13.1.1.2 The Contractor shall at all times observe and comply with all Federal, State and Local Laws, rules and regulations and all policies, rules, regulations and protocols of the Owner, in any manner affecting the Work and all such orders as exist at present and those which may be enacted in the future, by bodies or tribunals having jurisdiction or authority over the Work and the Contractor shall indemnify and save harmless the Owner and its Board of Education, Owner's Representative, Architect employees, officers, agents, or servants against any claim or liability arising from, or based on, a violation of any such law, ordinances, regulation, order or decree by the Contractor or the Contractor's officers, directors, employees, Subcontractors and suppliers.

§ 13.1.1.3. Historical lack of enforcement of any law, local or otherwise, shall not constitute a waiver of Contractor's responsibility for compliance with such law in a manner consistent with the Contract Documents unless and until the Contractor has received written consent for the waiver of such compliance from the Owner.

§ 13.1.2 The Contractor specifically agrees, as required by New York Labor Law, Sections 220, and 220-d, as amended, that:

- .1 No laborer, workman or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or any part of the Work contemplated by the Contract, shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
- .2 The wages paid for a legal day's work shall not be less than the prevailing rate of wages as defined by law.
- .3 The minimum hourly rate of wages to be paid shall not be less than that stated in the Specifications, and any redetermination of the prevailing rate of wages after the Contract is approved shall be deemed to be incorporated therein by reference as of the effective date of redetermination and shall form a part of this Contract. The Labor Law provides that the Contract may be forfeited, and no sum paid for any work done thereunder on a second conviction for willfully paying less than:
  - (a) The stipulated wage scale as provided in Labor Law, Section 220, Subdivision 3, as amended; or
  - (b) The stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended

§ 13.1.3 The Contractor specifically agrees, as required by the provisions of New York Labor Law Section 220-e, as amended, with respect to operations performed within the territorial limits of New York State, that:

- .1 In hiring of employees for the performance of work under this Contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no Contractor, Subcontractor nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
- .2 No Contractor, Subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, disability, sex or national origin.
- .3 There may be deducted from the amount payable to the Contractor by the Owner under this Contract a penalty of fifty (\$50.00) dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of this Section 13.1.3.
- .4 The Contract may be cancelled or terminated and all monies due under the Contract forfeited for a second or any subsequent violation of the terms and conditions set forth in this Section 13.1.3.

§ 13.1.4 The Contractor shall comply with all the provisions of the Immigration Reform and Control Act of 1986 and regulations promulgated pursuant thereto and shall require its Subcontractors to comply with same. The Contractor shall and does hereby agree to fully indemnify, protect, defend, and hold harmless the Owner, Owner's Board of

Education, Owner's Representative,, Architect, agents and employees from and against any penalties, fees, costs, liabilities, suits, claims, or expenses of any kind or nature, including reasonable attorney's fees, arising out of or resulting from any violation or alleged violation of the provisions of said laws by Contractor or its Subcontractor(s) in connection with the Work of the Contract Documents.

**§ 13.1.5** The Contractor shall maintain policies of employment as follows:

- .1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of age, creed, race, religion, color, sex, national origin, sexual orientation, gender identify or expression, military status, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their age, race, creed, religion color, sex, national origin, sexual orientation, gender identify or expression, military status, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.
- .2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to age, creed, race, religion, color, sex, national origin, sexual orientation, gender identify or expression, military status, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence.

**§ 13.1.6** Dust Hazards - The Contract shall be void if the Contractor fails to install, maintain, and effectively operate appliances and methods for the elimination of harmful dust when a harmful dust shall have been identified in accordance with Section 222-a of the Labor Law of the State of New York.

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**§ 13.3.3** Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. procedures.. Refer to Section 01 4000 Quality Requirements for additional requirements.

...

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

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

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**§ 13.5** Interest Payments due and unpaid under the Contract Documents shall ~~bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ not bear interest.

#### **§ 13.6 TIME LIMITS ON CLAIMS**

**§ 13.6.1** The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

#### **§ 13.7 LIENS**

**§ 13.7.1** If the Contractor or any of its subcontractors or suppliers should cause a Mechanic's Lien to be placed upon the property, then the Contractor shall be liable for any and all legal or bonding or insurance fees related to the removal of the Mechanic's Lien or the defense of any Mechanic's Lien enforcement or foreclosure proceeding. Such legal or bonding or insurance fees shall also be a deduction by the Owner from any moneys due or to become due to the Contractor.

#### **§ 13.8 SEXUAL HARASSMENT PROHIBITED**

**§ 13.8.1** Federal and state laws and the policies of the Owner prohibit sexual harassment of employees. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that create a hostile or offensive working environment for students, employees and volunteers of the Owner and employees, agents, consultants, suppliers, subcontractors and others engaged directly or indirectly by Contractor to perform work on the Projects. The Contractor shall exercise control over its employees, agents, consultants, subcontractors, and suppliers so as to prohibit acts of sexual harassment of students, employees and volunteers of the Owner. In the event the Owner, in its reasonable judgment, determines that the Contractor or its employees, agents, consultants, subcontractors and/or suppliers have committed an act of sexual harassment, upon notice from the Owner, the Contractor shall cause such person to be removed and shall take such other action as may be reasonably necessary to cause such sexual harassment to cease. In the event the Contractor or its employees, agents, Subcontractors or suppliers believes it has been the subject of sexual harassment by the Owner, its elected and appointed officials, students, volunteers, vendors, employees or agents, it shall give notice to the Owner; so, the Owner can take such action as may be reasonably necessary to cause any sexual harassment to cease.

#### **§ 13.9 GENERAL PROVISIONS**

**§ 13.9.1** Contractor hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time be reasonably required to carry out the terms and provisions of the Contract Documents.

**§ 13.9.2** Contractor is obligated, by virtue of entering into a contract with the Owner, to ensure that absolutely no asbestos containing material is used in conjunction with the Work. It is the Contractor's sole responsibility to provide assurance that no asbestos containing material is built into the construction, nor does any equipment used in the construction contain any asbestos containing material. If asbestos containing material is found, at any time during or after the construction is completed, it shall be the responsibility of the Contractor who installed said material to remove it and replace it with new non-asbestos containing material, as per federal, state and local mandates, and to indemnify all their employees, agents, or servants or any third parties including but not limited to the Owner and the Architect, and their respective servants or employees for any costs or damages incurred on account of personal injury or death or property damage caused by, arising out of, or in any way incidental to, or in connection with the performance of the Work hereunder. This provision will be limited only to the extent required by law and shall survive the termination or expiration of the Contract. Refer to Section 01 7800 Closeout Submittals for additional requirements.

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

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work; repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less. If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work

executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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

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

...

- .5 If the Contractor fails to satisfy or bond any filed liens against the Owner in the Performance of his contract,
- .6 disregards the instructions of the Architect or the Owner (when such instructions are based on the requirements of the Contract Documents);
- .7 breaches any warranty made by the Contractor under or pursuant to the Contract Documents.
- .8 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents.
- .9 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents.
- .10 fails or neglects to prosecute the Work in such a manner to reasonably assure completion within the contract time;
- .11 fails to keep the Project free from strikes, work stoppages, slowdowns, lockouts or other disruptive activity;

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

...

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is ~~finished~~ finished and the Contractor will be back charged for all costs incurred by the Owner.

...

**§ 14.2.5** The Owner may take over the work for one of the reasons stated in sub-paragraph 14.2.1 after giving the Contractor and the Contractor's Surety, if any, three days' written notice. The Contractor will be back charged for costs incurred by the Owner.

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

**Contract § 14.4 Termination by the Owner for Convenience**

**§ 14.4 Termination by the Owner for Convenience**

...

.4 proceed to complete the performance of the remaining Work on the Contract which has not been so terminated

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement and any deposits or down payments which the Contractor has made pursuant to the Agreement which cannot, in the exercise of good faith and due diligence by the Contractor, be refunded or applied as a credit in the Contractor's favor to other charges, provided, however, that if such deposits or down payments are not refundable, Contractor shall assign the applicable contract, agreement, purchase order, etc. to the Owner who, at its election, may require performance of same. The Contractor hereby waives and forfeits all other Claims for payment and damages, including, without limitation, overhead and profit related to Work terminated by the Owner pursuant to this Section 14.4.

**§ 14.4.4** In case of a termination pursuant to this Section 14.4, the Owner will issue a Construction Change Directive or authorize a Change Order, making any required adjustment to the Date of Substantial Completion and/or the sum of Contract monies remaining to be paid to the Contractor. The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) Claims which the Owner has against the Contractor under the Contract, and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum; multiplied by 15% representing the Contractor's overhead and profit.

**§ 14.4.5** For the remaining portions of the Contractor's Work which have not been terminated pursuant to this Section 14.4, the terms and conditions of the Contract with the Owner shall remain in full force and effect. The Contractor shall continue to prosecute that portion of its Work that was not terminated pursuant to this Section 14.4.

#### **§ 14.5 Limitation of Owner's Liability**

**§ 14.5.1** The Owner shall not be responsible for damages or for loss of anticipated profits on Work not performed on account of any termination of the Contractor by it.

**§ 14.5.2** The Owner shall not be liable to the Contractor for punitive damages on account of any termination of the Contractor and the Contractor hereby expressly waives its right to claim such damages against the Owner.

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**§ 15.1.1 Definition** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. As is set forth in other provisions of this Contract, delay in the Contractor's ability to complete the work may, in appropriate circumstances, give rise to a claim for additional time, but will under no circumstances be the basis of a claim for damages.

#### **§ 15.1.2 Time Limits on Claims**

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

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

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the

Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ~~24~~ten days after occurrence of the event giving rise to such Claim or within ~~24~~10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

#### **§ 15.1.5 Claims for Additional Cost**

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

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

...

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

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

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

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

**§ 15.1.7 Waiver of Claims for Consequential Damages.** The timelines provided herein for the making of claims shall be a condition precedent to any payment for such claims or the granting of any extension of time. Failure of the Contractor to comply with the time and notice provisions of this Article shall be an absolute bar to making any payment to or extending the time of the Contractor for such claim. All claims of any type seeking any monies, or an extension of time shall be accompanied by full documentation. A claim submittal without full documentation shall be rejected by the Architect and, if not timely resubmitted within the original claim period, as set forth above, shall be waived. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

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

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

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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

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

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to non-binding one day mediation, unless both parties agree to an extension.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. agree that claims, disputes or other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof shall, before the commencement of litigation or a party availing itself of self-help remedies, be submitted to a third party neutral Mediator agreed to by both parties or, if the parties cannot agree, appointed by the American Arbitration Association, at a non-binding Mediation that shall not exceed one calendar day. The parties may be represented by counsel at the Mediation, but no party may engage the Mediator as its representative after the Mediation. Statements made and documents provided or exchanged as part of the Mediation shall be for settlement purposes only and subject the applicable rules or regulations that govern such matters. All mediation shall take place within 30 days of any demand for same of and cost shall be shared by both parties.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to

file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

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

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

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

#### **§ 15.4.4 Consolidation or Joinder**

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

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

### **ARTICLE 16 - NO DAMAGES FOR DELAY**

**§16.1** Notwithstanding any other terms or conditions set forth in the contract documents, general or supplementary conditions, the Contractor agrees to make no claim for damages for delay in the performance of the work occasioned by any act or omission of the owner or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete the work, unless a delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. The Contractor hereby expressly assumes the risk of all such delays to the Work, unless the Contract Schedule is extended for excusable delays.

**§16.2** Contractor agrees and acknowledges that payment for the work may have been obtained through obligations or bonds which have been sold after public referendum. In the event the work is suspended or canceled as a result of the

order of any court, agency, department entity or individual having jurisdiction, or in the event the work is suspended or canceled due to the fact that a court, agency, department, entity or individual having jurisdiction has issued an order, the result of which is that the afore said obligations or bonds are no longer available for payment for the work, contractor expressly agrees that it shall be solely entitled to payment for work accomplished until a notice of suspension or cancellation is served upon the Contractor. Contractor expressly waives any and all rights to institute an action, claim, cause of action or similar for any damages it may suffer as a result of the suspension or cancellation of the work and/or its contract pursuant to this section.

**§ 15.4.4.3** ~~The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

## **Certification of Document's Authenticity**

### **AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:43:03 ET on 09/21/2022 under Order No. 1244105850 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)