

Principals:

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Founder:

Archie D. Fellenzer, Jr., P.E.
(1924 - 2014)

PRE-BID ADDENDUM NO. # 1

The information contained herein, revises, supplements, and/or supersedes the specific parts of the documents referred to and shall be attached to and become part of such documents as if originally forming a part thereof. Except as herein modified, all other provisions of the documents shall remain in full force as originally set forth.

ISSUED TO: ALL BIDDERS

PROJECT: Greenwood Lake Union Free School District
Elementary School Kitchen and Cafeteria Renovations
SED Project No. 44-21-11-02-0-002-015
F.E. Project No. 19-194

DATE: 1-20-22

ISSUED BY: Eric D. Fellenzer, P.E.

PAGES: 6

ATTACHMENT:

1. Revised drawing A-401
2. Sketches SK-AD-101.1, SK-A-101.1, SK-E-100.1, SK-E-200.1, SK-E-701.1
3. Revised specification Standard Form of Agreement (AIA A132)
4. Revised specification General Conditions (AIA 232)

RFI Items:

1. Please confirm if the asbestos abatement is to be done by the General Contractor?
Fellenzer Engineering LLP Reply: Asbestos Abatement scope of work is to be performed under the Contract for General Construction.
2. Please confirm if the Furniture noted on sheet A-401 is the by the General Contractor or owner's vendor?
Fellenzer Engineering LLP Reply: The tables and booths noted on the furniture schedule on A-401 are to be furnished and installed under state contract through the Owner.
3. Do they need one (1) or two (2) 9x4'9" fire shutters? The Door Schedule on A-600 only lists one (1) shutter but Detail 2 on A-300 is showing two (2) shutters. Also, the both of those mentioned drawings note a One-Hour Fire Rating but the specs call for a Three-Hour Fire Rating - do you know which fire-rating the owner needs?

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- Fellenzer Engineering LLP Reply: Two fire shutters as shown on section 2/A-300 are required. Additionally, each fire shutter shall have a 1 hr. fire rating. Delete reference to 3 hr. fire rating in specification.*
4. Is the signage and graphics as depicted on Drawing A-401 part of the GC Contract?
Fellenzer Engineering LLP Reply: The signage and graphics as seen on A-401 shall be part of the Contract for General Construction.
5. Please provide a Specification for EPY-1, Epoxy Floor?
Fellenzer Engineering LLP Reply: The specification for epoxy flooring can be seen in Specification 099600 High Performance Coating.
6. Please provide an “Or Equal” or Equivalent to Sherwin Williams Epoxy Floor?
Fellenzer Engineering LLP Reply: The contractor may at their discretion submit on an equivalent epoxy flooring for review.
7. Specifications call out for a beveled ceiling tile – but sheet A600 calls for a square edge tile. Please confirm we are to go with square edge?
Fellenzer Engineering LLP Reply: Ceiling tile specified on A-600 (Optime Health Zone) is a square edge tile. Delete reference to beveled ceiling tile in specification.
8. 2/A200 – Please confirm only new ceilings are required in the (4) rooms that receive new shafts?
Fellenzer Engineering LLP Reply: The existing ceiling grids in room 100 Vestibule, room 102 Main Office, room 104 Copy/Pantry and room 108 Nurse are to be removed and/or replaced as required to accommodate the new chases. Provide new ceiling tiles, to match existing, for altered areas.
9. The sheetrock ceilings that are to be patched – what is there existing conditions?
Fellenzer Engineering LLP Reply: Patch existing and new damaged areas as required for new work by others (MEP). Prep, skim coat, prime and paint all existing surfaces. Finish per specification 092900 section 3.1.D, and per the finish schedule on A-600.
10. Door tag #110-1 on sheet A600 states it is metal. However, sheet A100 shows a masonry wall – please confirm they want a masonry wall.
Fellenzer Engineering LLP Reply: The head and jamb of the wall shall be CMU, not metal as currently shown in the door schedule on A-600.
11. Anticipated schedule?
Fellenzer Engineering LLP Reply: All project dates are shown on drawing CIP-01, and in specifications 011100 Project Schedule and 011300 Milestone Schedule.
12. Spec section 114000 Food Service Equipment states all prime contractors should review drawing FS.1 through FS.5. There are no food service drawings included in the bid set. Please advise.
Fellenzer Engineering LLP Reply: Delete reference to FS.1 through FS. 5 in specification. All food service equipment is shown on A-402.
13. Who is the Fire Alarm vendor of the building, please advise?
Fellenzer Engineering LLP Reply: The most recent alterations to the school fire alarm system were done by Fire, Security & Sounds Systems, Inc, (518) 250-4364.

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14. Please provide clarification on the fire alarm panel that is to be relocated as shown on AD-100.
Fellenzer Engineering LLP Reply: The fire alarm panel noted on AD-100 is a remote annunciator. The existing device is an Edwards 3-LCDANN remote annunciator in a RLCM/D wall box. See sketches SK-AD-101.1, SK-A-101.1, SK-E-200.1 and SK-E-701.1 for additional clarification.
15. Please clarify location of power panels EP-1 and MDP. They are not shown on the drawings.
Fellenzer Engineering LLP Reply: EP-1 and MDP are located in electrical room 113A. See attached sketch SK-E-100.1 showing locations.
16. There is no site entrance (wheel cleaning pad) shown on the drawings. Please advise.
Fellenzer Engineering LLP Reply: G.C. to coordinate location of site entrance with construction manager and owner. A proposed staging area can be seen on CIP-02.
17. The silt fence detail is shown but there is no layout. Please advise.
Fellenzer Engineering LLP Reply: Silt fence detail is provided for soil stockpiling as shown on CIP-01. Should it be required based on the contractors means and methods, the contractor shall coordinate placement of the silt fence with construction manager and owner.
18. The temporary fence detail is shown but there is no layout. Please advise.
Fellenzer Engineering LLP Reply: The proposed staging area is shown on CIP-02. The contractor shall coordinate placement of temporary fencing with construction manager and owner.
19. As per many notes on the drawings, chopping of the slab and sawcut of the slab is by the plumber and not the GC. Is this correct? Is the concrete by the GC? Please advise.
Fellenzer Engineering LLP Reply: The P.C. is responsible for sawcutting and patching of the concrete floor for installation of his work. The G.C. shall grind, patch and provide a level service in areas where P.C. sawcut concrete floor. See drawings AD-100 and A-100 for additional information.
20. Please advise what the expected completion date is?
Fellenzer Engineering LLP Reply: All project dates are shown on drawing CIP-01, and in specifications 011100 Project Schedule and 011300 Milestone Schedule.
21. Please clarify which liquidated damages are correct? Instructions to Bidders item 8.A has it listed at \$1,500 a day, Bid Form has \$1,500 and Supplementary General Conditions 9.11.1 has \$1,000.
Fellenzer Engineering LLP Reply: Delete all references to \$1,500 and \$1,000 in the specifications. See revised specification A232 General Conditions, clause 8.4 for liquidated damages.
22. Please clarify the requirement under key note 4, drawing AD-100, for removal of existing wall finishes. What is the existing construction and what/how is a new finish to be constructed?
Fellenzer Engineering LLP Reply: See below for clarifications:

Faculty Lounge (Room 100)

Existing to be Removed

- GWB and furring strips

New as Specified

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- *GWB and studs*

Cafeteria (Room 108) Walls

Existing to be Removed

- *Paneling from floor to ceiling*
- *Chair rail*
- *Molding at floor and ceiling*
- *Furring strips*

New as Specified

- *Patch and paint existing CMU/parged masonry.*

Kitchen (Room 110) Walls

Existing

- *CMU*
- *Parged masonry*

New

- *Patch and paint*

Corridor (Room C11) Walls

Existing (Adjacent to crawl space) to be Removed

- *Floor molding*
- *Chair rail*
- *Wall panel (4' high)*

Existing (Remaining wall areas)

- *CMU*
- *Parge masonry*

New as Specified

- *Patch and paint existing CMU/parged masonry*

23. All furniture per schedule on drawing A-401 is by others? Is this correct?

Fellenzer Engineering LLP Reply: All wall art, signage and graphics are under the Contract for General Construction. The tables and booths, as noted in the furniture schedule on A-401, are to be furnished and installed under state contract through the Owner.

24. All seating shown on drawing A-400 is by others? Is this Correct?

Fellenzer Engineering LLP Reply: The tables and booths, as shown on A-400, are to be furnished and installed under state contract through the Owner.

25. Under which contract is responsible to furnish and install the roof curbs for the Mechanical roof equipment?

Fellenzer Engineering LLP Reply: All roof curbs for rooftop mechanical equipment shall be furnished and installed under the Contract for Mechanical.

26. Under which contract is responsible for the cutting of the existing roofing and concrete arch needed for the installation of the roof top mechanical equipment?

Fellenzer Engineering LLP Reply: All cuts for new roof ductwork penetrations and firestop penetrations by M.C. G.C. to patch roof water tight per details shown on A-500.

27. Is there a requirement for an Owner's trailer? If so, please provide a specification.

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Fellenzer Engineering LLP Reply: No requirement for owner's trailer.

28. Please provide a specification section and listing as part of the specification index for resinous flooring.

Fellenzer Engineering LLP Reply: The specification for epoxy flooring can be found in Specification 099600 High Performance Coating.

29. One section calls for a CPM type of scheduling. Under another section a Bar Chart is called for scheduling. Which one is correct?

Fellenzer Engineering LLP Reply: Per specification 011200 Multiple Contract Summary, section 1.7, item #22: "General Contractor to produce a draft CPM Schedule with 10 days and coordinated CPM Schedule within 20 days of award and updated monthly for the duration of the project, MEP to provide their schedules to the General Contractor. Provide Baseline General Construction Schedule incorporating the other Prime Contracts Schedules with the General Construction Schedule, and provide an update to the construction schedule on a monthly basis for the duration of the project as part of the monthly payment requisition process." Additionally, delete reference to bar chart in specification.

30. Spec 233113-15 G. talks of SA duct to be lined, but on the drawings, they are talking about duct wrap. What is the intent for the SA?

Fellenzer Engineering LLP Reply: All supply/return/outside air ductwork shall be insulated per the Insulation Schedule on H-801. Duct wrap is only required for the kitchen hood exhaust ductwork. Refer to detail 6/H-701 for more information. Additionally, delete reference to ductwork lining in specification.

31. Is a roof curb required for exhaust fan E-1?

Fellenzer Engineering LLP Reply: Add note 3 to the exhaust fan schedule on H-801 "3. Provide unit with a manufacturer approved roof curb."

32. The PC is installing 2 sump pumps. I see there are no containment basins for these pumps. Can you instruct the PC on how this is going to be handled?

Fellenzer Engineering LLP Reply: Per detail 3/P-300, P.C. to provide sump pump basin. Additionally, as seen on the sump pump schedule the minimum pit size is 24" x 24" x 24".

33. Who is responsible for kitchen equipment and installation, District or GC?

Fellenzer Engineering LLP Reply: All kitchen equipment and installation shall be part of the Contract for General Construction.

34. Who is responsible for furniture, District or GC?

Fellenzer Engineering LLP Reply: All wall art, signage and graphics are under the Contract for General Construction. The tables and booths, as noted in the furniture schedule on A-401, are to be furnished and installed under state contract through the Owner.

35. Please clarify keyed note 6 on AD-100. Provide extent of finishes to be removed?

Fellenzer Engineering LLP Reply: See sections 1 & 2 as shown on A-300. Additionally on floor plan 1/A-200 the gypsum ceiling above the ACT soffit may be omitted provided the fire rating is maintained.

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Additional Amendment to Drawings and Specifications:

1. See revised drawing A-401.
2. See sketches SK-AD-101.1, SK-A-101.1, SK-E-100.1, SK-E-200.1, SK-E-701.
3. See revised specifications Standard Form of Agreement (AIA A132) and General Conditions (AIA 232).
4. Delete reference to Supplementary Conditions from Index to Specifications.
5. Delete specification Supplementary Conditions from bid documents.

Please sign and date this addendum E-mail back to jdd@felp.com and CC edf@felp.com, rfirneis@savinengineers.com, fpolletta@savinengineers.com, rporras@gwlufsd.org and include it with the bid submission.

Company Name: _____

Address: _____

Company Officer: _____

Date: _____

-----**END OF ADDENDUM**-----

DRAFT AIA® Document A132™ – 2019

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Greenwood Lake Union Free School District«»«»
1247 Lakes Road«»
Monroe, NY 10950«»
« »

and the Contractor:
(Name, legal status, address, and other information)

« »« »
« »
« »
« »

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

Greenwood Lake UFSD«»
Elementary School Kitchen and Cafeteria Renovations«»
80 Waterstone Road, Greenwood Lake, NY 10925«»

The Construction Manager:
(Name, legal status, address, and other information)

Savin Engineers, P.C.«»«»
3 Campus Drive«»
Pleasantville, NY 10570«»
« »

The Architect:
(Name, legal status, address, and other information)

Fellenzer Engineering, LLP«»«»
22 Mulberry Street«»
Middletown, NY 10940«»
« »

The Owner and Contractor agree as follows.

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.

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

This document is intended to be used in conjunction with AIA Documents A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™-2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of this Agreement.

☐ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

<< >>

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion of the Project or Portions Thereof

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:

(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete

§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:

(Check one of the following boxes and complete the necessary information.)

[☐] Not later than () calendar days from the date of commencement of the Work.

[☐] By the following date:

§ 3.4.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:

Portion of Work	Date to be substantially complete

§ 3.4.3 If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[☐] Stipulated Sum, in accordance with Section 4.2 below

[☐] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below

[☐] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)

§ 4.2 Stipulated Sum

§ 4.2.1 The Contract Sum shall be (\$), subject to additions and deductions as provided in the Contract Documents.

§ 4.2.2 Alternates

§ 4.2.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.2.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price

§ 4.2.4 Unit prices, if any:
(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 4.3 Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price

§ 4.3.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

« »

§ 4.3.3 The method of adjustment of the Contractor's Fee for changes in the Work:

« »

§ 4.3.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« »

§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed « » percent (« » %) of the standard rental rate paid at the place of the Project.

§ 4.3.6 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

« »

§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:

« »

§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

<< >>

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed <> percent (<> %) of the standard rental rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 4.4.7 Guaranteed Maximum Price

§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed <> (\$ <>), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 4.4.7.2 Alternates

§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price

§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:

(Identify each assumption.)

<< >>

§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)

<< >>

§ 4.6 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

« »

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the « » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « » day of the « » month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Construction Manager receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.4.3 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.4.3.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.4.3.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price

§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.

§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

§ 5.1.5.3 In accordance with AIA Document A232-2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.5.3.1 The amount of each progress payment shall first include:

- .1 The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;
- .2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .3 The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 5.1.5.3.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232-2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232-2019;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.1.5.6 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.5.7 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 5.1.6.2.1 The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.6.2.2 The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 5.1.6.2.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.1.6.4 In accordance with AIA Document A232-2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.4.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 5.1.6.4.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232-2019;

- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.6.5 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.6.6 In taking action on the Contractor’s Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

§ 5.1.6.7 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.6.8 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« »

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)

« »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:

(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)

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§ 5.2 Final Payment

§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum

§ 5.2.1.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect.

§ 5.2.1.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

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§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price

§ 5.2.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

§ 5.2.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

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§ 5.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

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ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[☐] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[« »] Litigation in a court of competent jurisdiction.

[« »] Other: *(Specify)*

« »

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.1.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

« »

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price

§ 7.2.1 Termination

§ 7.2.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.2.1.2 Termination by the Owner for Cause

§ 7.2.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:

- .1** Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2** Add the Contractor’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3** Subtract the aggregate of previous payments made by the Owner; and
- .4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.

§ 7.2.1.2.2 When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232–2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.

§ 7.2.1.2.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.

§ 7.2.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

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§ 7.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

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§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

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§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

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§ 8.7 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 8.8 Other provisions:

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ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
- .2 AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit
- .3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

<< >>

- .5 Drawings

Number	Title	Date

- .6 Specifications

Section	Title	Date	Pages

- .7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:

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

[☐] AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work

[☐] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this Agreement.)

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[☐] The Sustainability Plan:

Title	Date	Pages

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

« »« »

(Printed name and title)

CONTRACTOR (Signature)

« »« »

(Printed name and title)

DRAFT AIA® Document A232™ – 2019

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

(Name, and location or address)

Greenwood Lake UFSD↔↔↔
Elementary School Kitchen and Cafeteria Renovations↔↔↔
80 Waterstone Road
Greenwood Lake, NY 10925

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Savin Engineers, P.C.↔↔↔↔↔
3 Campus Drive↔↔↔
Pleasantville, NY 10570

THE OWNER:

(Name, legal status, and address)

Greenwood Lake Union Free School District↔↔↔↔↔
1247 Lakes Road↔↔↔
Monroe, NY 10950

THE ARCHITECT:

(Name, legal status, and address)

Fellenzer Engineering, LLP↔↔↔↔↔
22 Mulberry Street↔↔↔
Middletown, NY 10940

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.

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

This document is intended to be used in conjunction with AIA Documents A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

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

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties. No obligation of the Architect and/or Owner's Representative to the Owner, nor any obligation of the Owner to the Architect and/or Owner's Representative, whether expressed by agreement or implied by law, shall be construed as intended for the benefit of the Contractor. Nothing in the Contract Documents nor in any aspect of the Architect's and/or Owner's representative's relationship with the Owner shall create or give rise to any duty whatsoever on the part of the Architect and/or the owner's representative to the Contractor. The term "Contractor" in this paragraph shall include the Contractor, its officers, employees, agents, contractees, and sub-contractors of any tier; coordinate with paragraph 3.18.1 of these conditions.

§ 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 Contractor is cautioned that the "Work included" is general and in no way limits or qualifies the contract requirements.

§ 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 other Contractors, including other Multiple Prime Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 Contractors. Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 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.

§ 1.1.8 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.

The Specifications may describe (or the Drawings may show) the general placement required of materials or equipment, but the actual required placement may vary depending on the specific material or equipment used by the

Contractor or the existing field conditions. The Contractor shall bear all direct and indirect costs associated with such variances.

Some Specifications may be written in a condensed outline form and omitted words shall be included by reference. If the Specifications identify a task, it shall mean the “Contractor shall furnish, install and complete” the identified task unless otherwise stated.

Reference to standard specifications, manuals or codes shall mean reference to the latest standard specification, manual or code in effect at the time of the execution of the Owner-Contractor Agreement, unless otherwise stated. When reference is made to a manufacturer, trade association, reference standard or similar source (such as ASTM, ASA, AISC, ACI, etc.) the standards or requirements of such entity shall be incorporated into the Specifications and have the force and effect as though they were set forth expressly. Upon entering into the Owner-Contractor Agreement, the Contractor acknowledges its familiarity with those references, codes, etc. The date of the referenced standard shall be the latest edition in effect at the time of the execution of the Owner-Contractor Agreement unless otherwise stated.

§ 1.1.9 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 also~~ includes, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.10 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 and certify termination of the Agreement under Section 14.2.2.~~

§ 1.1.9 Approved. When the words “approved,” “satisfactory,” “proper,” or “as directed” are used, acceptance by the Architect shall be understood.

§ 1.1.10 Provide. When the word “provide” (including derivatives thereof) is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place ready for operation or use under the terms of the Specifications.

§ 1.1.11 Addenda. Addenda are written or graphic instruments issued prior to the execution of the contract which modify or interpret the bidding documents, including the drawings and Specifications by additions, deletions, clarification, corrections, or supplementary information.

§ 1.1.12 Bulletins. Bulletins are written or graphic instruments issued by the Architect after the execution of the contract, which request a proposal from the Contractor that, if accepted by the Owner, will cause the execution of a Change Order to modify the Contract Documents.

§ 1.1.13 Knowledge. 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 discover (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.

§ 1.1.14 Furnish. “Furnish” shall mean purchasing and/or fabricate and deliver to the job site or other location when so designated.

§ 1.1.15 Install. “Install” shall mean build-in, mount in position, connect or apply the specified object(s) and, where applicable, adjust and start-in operation.

§ 1.1.16 Contractor. Where the word “Contractor” is used in the Contract Documents, it refers to all Prime Contractors. (See Article 3.1 for additional information.).

§ 1.1.17 Alternate. “Alternate” shall mean a variation in Contract requirements on which a separate price is to be received by the Owner as part of the bid. If the Alternate is accepted in writing by the Owner, the variation is then a part of the Contract and the amount of money quoted be added to or deleted from the base Bid is taken into account in determining the Contract Sum.

§ 1.1.18 Owner's Representative or Construction Manager. The terms Owner's Representative or Construction Manager may be used interchangeably throughout the Contract Documents. Owner's Representative or Construction Manager refers to any firm, entity or individual (or any successor firm, entity or individual) retained by the Owner as Owner's Representative or Construction Manager. Section 01080 of the Specifications identifies the retained Owner's Representative or Construction Manager for this project.

§ 1.2 Correlation and Intent of the Contract Documents

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

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

§ 1.2.1.2 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 and of highest quantity and/or cost shall govern. The Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The Contractor herewith agrees that no extra compensation shall be awarded to him, since he herewith received specific instructions to the procedure and values of the work. The terms and conditions of this paragraph 1.2., however, shall not relieve the Contractor of any obligations set forth in paragraphs 3.2 and 3.7.

§ 1.2.1.2.1 On the Drawings, given dimensions shall take precedence over small scale drawings.

§ 1.2.1.2.2 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. No extra charge or compensation shall be allowed on account of differences between actual dimensions indicated on the Drawings. Any difference which may be found shall be submitted to the Architect through the Construction Manager for resolution before proceeding with the Work.

§ 1.2.1.2.3 If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit through the Construction Manager detailed drawings of such departure for approval by the Architect before making the change.

§ 1.2.1.2.4 Drawings, in general, are made to scale, but all working dimensions shall be taken from the figured dimensions or by actual measurements taken at the job and in no case by scaling. The Contractor shall study and compare all Drawings and verify all figures before laying out or constructing the work, which might have been avoided thereby. Whether or not an error is believed to exist, deviation from the Drawing and the dimensions given thereon shall be made only after approval in writing is obtained from the Architect through the Construction Manager.

§ 1.2.1.3 In case of omissions or discrepancies between the Contract Documents, the Contractor shall secure instructions from the Architect through the Construction Manager before proceeding with the work affected by

omissions or discrepancies. The Contractor shall assume full responsibility and cost for proceeding with such work without approval.

§ 1.2.1.4 During the course of work, should any errors, omissions, ambiguities, discrepancies or conflicts be found on the Drawings or in the Specifications to which the Contractor has failed to call attention before submitting his bid, the Architect through the Construction Manager shall interpret the intent of the drawings and Specifications and the Contractor hereby agrees to abide by the Architect's interpretation and agrees to carry out the work in accordance with the decision of the Architect.

§ 1.2.1.5 Whenever any additional materials and/or workmanship not shown or specified are required to complete the work of the Contract Documents in accordance with the obvious intent thereof, the Contractor shall provide these materials and workmanship at no additional cost to the Owner.

§ 1.2.1.6 Salvageable Materials: All existing materials, equipment, misc. etc. scheduled for demolition are the property of the Owner. If requested, Contractors will remove and store any such items to a location designated by the Owner.

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

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

§ 1.2.2.1 The specifications are generally divided into trade sections in accordance with the Construction Specifications for the purpose of convenience, and ready reference only. The Contractor will be permitted to allot the work of Subcontractors at his own discretion regardless of the grouping in the specifications. It shall be his responsibility to settle definitely with each Sub-contractor the portions of the work, which each will be required to do and the Owner or Architect assumes 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 qualifications noted, and shall perform operations prescribed according to the conditions stated, including specified operations, processes or methods, furnishing therefore all necessary labor, materials, equipment and incidentals required to complete the work.

§ 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. Execution of the contract by the Contractor is a representation that the Contractor has carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site and all improvements thereon, the specific conditions under which the Work is to be performed, 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 local conditions and the Contract Documents will not be permitted. The Contractor shall also review accessibility and general character of the site or building(s), the extent of existing work within or adjacent to the site, and any other work being performed thereon at the time of submission of his bid.

§ 1.2.3.1 It is intended that all mechanical and electrical systems will be complete and in proper operation and that all construction components will be complete and in compliance with accepted construction practice upon completion of the Work. Even if items are missing from the Plans and/or Specifications, but are normally required for proper operation of mechanical and electrical 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.

§ 1.2.4 The Contractor shall provide all labor, materials, equipment, appliances and services necessary to execute and complete all work as required by the Contract Documents and the applicable Building Codes. Contractors shall

conduct pre-construction surveys and provide photo/videos of any existing damage in areas where new construction is to take place prior to the start of work.

§ 1.2.4.1 The Contractor and each Subcontractor shall evaluate and satisfy themselves with the conditions at the site and limitations under which the Work is to be performed including, without limitation, (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, (5) any time restrictions for accessing or working at the site, (6) the storage, handling and trucking of materials to be used on-site, and (7) all other matters as may be incidental to the work under the Contract, before and after delivery of the bid proposal.

§ 1.2.4.2 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 Sub-contractor to comply with the requirements of this Paragraph 1.2.4.

§ 1.2.4.3 Contractor represents and warrants that its investigation of the site was performed in detail and was sufficient to disclose the condition of the Project Site and all improvements thereon, and the conditions under which the Work is to be performed, including, without limitation (i) the location, condition, layout and nature of the Project Site and surrounding areas; (ii) anticipated labor supply costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues pertinent to the performance of the Work.

§ 1.2.4.4 The Contractor shall be responsible to remove and/or relocate all items which interfere with the new construction and shall correct all visible code violations at no additional cost to the Owner. Such violations shall include, but not be limited to, electrical panel wires, firestopping at fire-rated partitions.

§ 1.2.5 If the Contract Documents are not in concurrence regarding the quantity or quality of products, the Contractor shall request interpretation from the Architect. The Architect's interpretations shall be based on the following criteria:

- .1 Specifications shall determine quality.
- .2 Drawings shall determine quantity.
- .3 Large scale details shall govern over smaller scale details.

§ 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-, except as otherwise expressly agreed to in writing between the Owner and the Architect and/or the Architect's consultants. 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 Owner's, the Architect's or Architect's consultants' reserved rights. The Owner's rights top ownership and use of the Instruments of Service are governed solely by the Owner-Architect Agreement.

§ 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.

§ 1.6.1.1 All notices to be given hereunder shall be in writing and may be given, served, or made (1) by depositing the same in the U.S. mail, addressed to the authorized representative of the party to be notified, postage prepaid, and registered or certified with return receipt requested; (2) by depositing the same for overnight delivery (prepaid by or billed to the party giving notice) with Federal Express, UPS or other nationally recognized overnight delivery service addressed to the authorized representative of the party to be notified; or (3) by delivering the same in person to the said authorized representative of such party. Notice deposited in the mail in accordance with the provisions hereof shall be effective, unless otherwise stated in the Agreement, from and after the fourth (4th) day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given in any other manner shall be effective only if and when received by the party to be notified. Any party may change their respective address and/or their authorized representative by giving the other parties at least seven (7) days' written notice thereof.

§ 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 in accordance with applicable provisions of law. 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. Unless otherwise provided in the Agreement or the Contract Documents or as otherwise agreed to by the parties, the parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

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

§ 1.9 References to trade publications, industries, and published standards shall carry the latest date, including latest revisions, unless dated to the contrary. Further, all work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this 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, the National Board of Fire Underwriters and applicable City and State Building Codes and Authorities having jurisdiction.

§ 1.10 The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the work of the plumbing, heating, ventilation, air conditioning, electrical, and other specialized trades, and to all of the sections of the Specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results.

§ 1.11 All indications or notations on the drawings which apply to one of a number of similar situations, materials, or processes shall be deemed to apply to all such situations, materials, or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.12 The general character of the detailed work is shown on the drawings, but minor modifications may be made on the full size drawings. Any details shall be worked out in relation to their location and their connection to other parts of the work. Where details or conditions are indicated in summary form, such details or conditions shall be continued throughout the course or parts in which they occur. The Contractor shall be responsible for the complete and correct application of such details throughout the portions of the project in which they occur.

§ 1.13 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 through the Construction Manager 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, the Construction Manager and the Owner.

§ 1.14 Confidentiality

§ 1.14.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except: (1) with prior written consent of the Owner, (2) information that was in the public domain prior to the date of this Agreement, (3) information which becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, (4) as may be required to perform the Work or by any applicable law, or (5) for purposes of coordination with other prime contractors.

§ 1.14.2 The Contractor, any time upon request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner of the Architect to the Contractor.

§ 1.14.3 The Contractor shall specifically cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment of the Work to warrant and represent all items set forth in this Paragraph 1.6.

§ 1.14.4 The representations and warranties contained in this Paragraph 1.14 shall survive the complete performance of the Work or earlier termination of this Agreement.

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 Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 Evidence of the Owner's Financial Arrangements (Omitted)

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

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

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

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 The Owner shall not be responsible for furnishing surveys (unless required for the execution of the Work and requested by the Contractor in writing, and agreed to by the Owner) or other information as to the physical characteristics of, legal limitations of or utility locations for the Project site, but shall furnish or cause to be furnished to the Contractor a legal description of the Project site, which shall not constitute one of the Contract Documents. Contractor shall confirm the location of each utility, shall excavate and dispose of each on-site utility and shall cap each off-site utility as required by the Work and a may be included in the Specifications. Neither the Owner nor the Architect shall be required to furnish Contractor with any information concerning subsurface characteristics or conditions of the areas where the Work is to be performed. When the Owner or Architect has made investigations of subsurface characteristics or conditions of the areas where the Work is to be performed, such investigations, if any, were made solely for the purposes of Owner's study and Architect's design. Neither such investigations nor the records thereof are a part of the Contract between Owner and Contractor. Owner has made available to Contractor, and the Contractor has studied the result of such test borings and information that it has as to subsurface conditions and site geology. Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of borings made, or of the logs of test borings, or of other investigations, or of the interpretations made thereof, and there is no warranty or guarantee, express or implied, that the conditions indicated by such investigations, borings, logs or information are representative of those existing throughout the Project site, or any part thereof, or that unforeseen developments may not occur. At Owner's request, the Contractor shall make available to the Owner the results of any site investigation, test borings, analyses, studies or other tests conducted by or in possession of the Contractor or any of its agents. The Contractor represents that it is familiar with the Project site and has received all information it needs concerning the conditions of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as tot the condition thereof, including, without limitation, all structural, surface and subsurface conditions which could have been reasonably discovered or foreseen. The Contractor shall undertake such further investigations and studies as may be necessary or useful to determine surface and subsurface conditions. In connection with the foregoing, Contractor shall be solely responsible for ascertaining the locations of (and shall locate prior to performing any Work), all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone and other cables, by reference to the General Contractor reports, diagrams, maps and marking of such locations, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. Based upon the foregoing inspections, understandings, agreements and acknowledgments, the Contractor agrees and acknowledges (i) that the Contract Sum is just and reasonable compensation for all the Work, including all foreseen and foreseeable risks, hazards and difficulties in

connection therewith, (ii) that the Contract Time is adequate for the performance of the Work and (iii) that the Work shall not result in any lateral or vertical movement of any structure. The Contractor shall have no claims for surface or subsurface conditions encountered which could have been reasonably discovered or foreseen. The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements and easements and shall contact the utilities, cable companies as necessary to ensure that such lines, cables, pipes and pipelines are not damaged.

§ 2.3.24 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. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

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

§ 2.3.43 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

~~§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.~~

~~§ 2.3.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~

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

§ 2.3.7 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.

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten~~three-day period after receipt of notice from the Owner, Architect or Construction Manager to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such three-day period, without prejudice to other remedies the Owner may have, immediately correct such ~~deficiencies~~default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold, modify and/ or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including

Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure, including, without limitation, the Owner's reasonable attorney's fees. If current and future payments 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.

§ 2.6 Acceleration Clause

§ 2.6.1 The Owner reserves the right to accelerate the work of the Contract. In the event that the Owner directs acceleration, such directive will be only in written form. The Contractor shall keep cost and other project records related to the acceleration directive separately from normal project costs and records and shall provide a written record of acceleration cost to the Owner on a daily basis.

§ 2.6.2 In the event that the Contractor believes that some action or inaction on the part of the Owner constitutes an acceleration directive, the Contractor shall immediately notify the Owner in writing that the Contractor considers the actions an acceleration directive. This written notification shall detail the circumstances of the claimed acceleration directive. The Contractor shall not accelerate their work efforts until the Owner responds in writing to the written notification. If acceleration is then directed or required by the Owner, all cost records referred to above shall be maintained by the Contractor and provided to the Owner on a daily basis.

§ 2.6.3 In order to preserve a claim to recover additional costs due to acceleration, the Contractor must document that additional expenses were incurred and paid by the Contractor. Labor costs recoverable will be only overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will be only the cost of added equipment mobilized to the site to accomplish the accelerated work effort.

§ 2.6.4 Notwithstanding anything to the contrary contained in this paragraph 2.5, the Contractor shall not be entitled to any additional costs, expenses or payments in the event of acceleration due to or required as a result of any delays caused by or attributable to the Contractor.

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 Construction Manager or Architect in their 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. The Contractor is deemed to be a qualified expert in the systems and construction requirements of the Work of his Contract. He is deemed to have anticipated the more expensive way of doing the Work, unless he sought and received a contradictory written interpretation, from the Architect, clarifying any errors, inconsistencies or omissions he may discover in the Contract Documents. Even if items are missing from the Plans or Specifications, but are normally required for proper execution, function and completion of the Work and the Contractor begins fabrication or execution of the Work without requesting said interpretation from the Architect, no excuse will thereafter be entertained for failure to complete the Work within the cost limits of his Contract.

§ 3.2.1.1 The Contractor shall rely on its own knowledge and its review and interpretation of the Contract Documents and data provided in entering into the Contract and not the representations of the Owner or other persons. The

Contractor acknowledges that quantities provided in the Contract Documents are estimates only and Contractor shall not seek additional compensation or adjustment in price based on a variation in actual quantities.

§ 3.2.1.2 Prior to execution of the Contract, the Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, and (iv) availability and cost of materials, tools, and equipment.

§ 3.2.1.3 The location of existing features shown on plans is intended for general information only. The Contractor, alone, is responsible for accurate determination of the location of all structures, and shall not be entitled to any extra payment for discrepancies between the Work as shown in the Contract Documents and existing conditions.

§ 3.2.1.4 The locations, depths and data as to underground conditions have been obtained from records, surface indications and data furnished by others. Information furnished is solely for the convenience of the Contractor without any warranty, expressed or implied as to its accuracy or completeness. The Contractor shall verify all existing conditions prior to commencing the Work. The Contractor shall make no claim against the Owner or Architect with respect to the accuracy or completeness of such information if the conditions found after commencement of the Work are different from those as indicated.

§ 3.2.1.5 The Contractor shall be solely responsible for the conditions which develop during construction and in the event any structure is dislocated, or over strained, or damaged so as to affect its usefulness, the Contractor shall correct or repair any dislocations, over strains or damages caused at no additional cost to Owner.

§ 3.2.1.6 The Contractor is responsible for restoration and/or repair of utilities, private property, buildings, pavement, walkways, roads, etc. damaged by its activities during the performance of its Work.

§ 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 2.3.5, 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 Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 The accuracy of grades, elevations, dimensions, other measurements or locations of existing conditions is not guaranteed by the Architect or Owner, and the Contractor is responsible for verifying same. The Contractor shall assume full responsibility for accuracy of measurements obtained at the site. No extra compensation will be allowed because of differences between actual measurements and dimensions indicated on the Drawings, nor for Contractor's failure to coordinate work with actual field measurements.

§ 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 Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors,

inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 In the case of any errors, inconsistencies or omissions in the Contract Documents, the Contractor shall secure instructions from the Architect before proceeding with the Work affected by the errors or omissions. If the Contractor performs any construction activity which involves an error, inconsistency or omission in the Contract Documents without first providing notice to the Architect of such condition and receiving authorization to proceed, the Contractor shall assume responsibility for such performance and shall bear an appropriated amount of the attributable costs for correction.

§ 3.2.6 The Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the Architect and the Owner. The Contractor shall report to the Architect whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

§ 3.2.7 The Contractor may submit requests for information to the Architect through the Construction Manager to help facilitate the Contractor's performance of the Contract. Prior to submitting each request for information, 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.

§ 3.2.8 Each request for information shall be submitted to the Architect through the Construction Manager, in writing, on the form immediately following these Supplementary Conditions. Each request for information shall identify the specific sources which were reviewed by the Contractor in an effort to determine the information requested, and a statement to the effect that the information being requested could not be determined from such sources.

§ 3.2.9 The Contractor shall submit each request for information sufficiently in advance of the date by which such information is required in order to allow the Architect sufficient time, in the Architect's professional judgment, to permit adequate review and response and to permit Contractor compliance with the latest construction schedule.

§ 3.2.10 The Contractor shall maintain a log at the Project site that sequentially numbers and lists each request for information. This log shall contain the Drawing reference or Specification section to which the request pertains, the date of the request, to whom the request was made, by whom the request was made, the nature of the request, and the Architect's resolution thereof. This log shall be reviewed at each Project meeting and the status of the requests for information shall be made part of the minutes of such meetings.

§ 3.2.11 The Contractor shall reimburse the Owner amounts charged to the Owner by the Architect for responding to Contractor requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared Coordination Drawings, or prior Project correspondence or documentation.

§ 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, the Construction Manager, and the 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. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.1.1 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.

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

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

§ 3.3.4 Each Contractor shall be responsible for complying with applicable union regulations existing under current labor agreements in performing construction work on the project. The existing Construction Manager/Owner Contract is an agency contract and all construction contracts will be made directly with the Owner.

§ 3.3.5 The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. Each Prime Contractor shall coordinate its own Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.3.6 Contractor is solely responsible for managing labor and labor relations of those performing its Work on the Project, including labor disputes or concerted activity, direct or indirect, without any delays or interference with the Work schedule and/or any other Contractors at the Project site. No delay in performance of the Work shall be excused by reason of labor problems affecting the Contractor any Subcontractor. The Contractor shall only employ labor on the Project or in connection with its Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Work to be performance. 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 lockout at the Project by the Contractor.

§ 3.3.6.1 If the Contractor has engaged the services of workers and/or Subcontractors who are members of trade unions, the Contractor shall 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 agreement 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. Each Contractor shall be responsible for complying with union regulations existing under current labor agreements in performing construction work on the Project.

§ 3.3.6.2 In case the progress of the Work to be performed by the Contractor is affected by any undue delay in furnishing or installing any items or materials or equipment required pursuant to its agreement with the Owner 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 capital improvement work pursuant to its contract.

§ 3.3.6.3 The Contractor shall ensure that its work continues uninterrupted during the pendency of a labor dispute. In the event of strikes or labor disputes by the Contractor's forces performing Work on the Project, the Contractor shall continue with its Work and provide all necessary manpower as required to maintain the schedule and completion of the Project.

§ 3.3.6.4 Should it become necessary to create a separate entrance for a Contractor involved in a labor or material dispute, all costs associated with creating that entrance shall be borne by the Contractor(s) involved in the dispute. Such costs shall include, but not be limited to signage, fencing, temporary roads, and security personnel as deemed necessary by the Owner for the safety of the occupants of and Work at the Project site.

§ 3.3.6.5 There shall be no extension of time and no additional compensation granted for delays caused by labor or material disputes unless approved by the Owner under extraordinary circumstances, in the sole discretion of the Owner.

§ 3.3.6.6 The Contractor shall be liable to the Owner for all damages suffered by the Owner occurring as a result of disruptive labor activity at the Project site, including but not limited to work stoppages, slowdowns, disputes or strikes.

§ 3.3.7 Prohibitions: There shall be no smoking or other use of tobacco products, alcohol or illegal drugs at the construction site. No weapons are permitted at the construction site. Contractor and its agents shall refrain from the use of profanity or dressing in any way that is disrespectful or harassing to legally protected groups, including but not limited to race, color, sex, gender, age, disability, religion, national origin, or sexual orientation

§ 3.4 Labor and Materials

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

- .1 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.
- .2 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of all workers to areas permitted by law, ordinances, permits or the Contract Documents, and shall not disturb the premises more than required for the proper performance of the Work and/or permitted by the Owner.
- .3 Contractors and Subcontractors warrant that they have good title to all materials used in performing Work on this Contract.

§ 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, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 After the Contract has been executed, the Owner and Architect will consider requests for the substitution of products in place of those specified only if all specified materials, products or equipment are removed from, or become unavailable in the marketplace after execution of the Contract and only at “no change” or “credit” to Contract amount and if the Contractor satisfies the procedural requirements set forth in the General Requirements of the Specifications. By making requests for substitutions, the Contractor:

- .1 Represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 Represents that it will provide the same warranty for the substitution as it would have provided for the product specified;
- .3 Certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution, except for the Architect’s redesign costs, and waives all claims for additional costs related to the substitution that may subsequently be incurred by the Contractor; and
- .4 Shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.2.2 The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for reviewing the Contractor's proposed substitutions and making agreed upon changes in the Drawings and Specifications resulting from such substitutions. The Owner may seek reimbursement pursuant to the procedures set forth in § 9.5.1.

§ 3.4.2.3 The Contractor shall bear all expenses resulting from substitutions including the cost of General Conditions as well as any structural, plumbing, mechanical and electrical trade costs made necessary by the substitution.

§ 3.4.2.3 The Architect's decision of approval or disapproval of a proposed substitution shall be final and will be set forth in writing. Should the Architect not approve the proposed substitution, the cost of the Architect's and his consultant's review of any subsequent proposed substitutions for the material, product or equipment shall be deducted from the Contract Sum.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons it has retained to carrying out the its Work on the Project, and other persons carrying out the Work on the Project. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Should any disorderly, incompetent, unfit or unskilled person be hired or employed by the Contractor to perform Work on the Project, upon the request of the Owner, said person shall be removed from the Project and not again be assigned to perform the Contractor's Work without the prior written permission of the Owner.

§ 3.4.3.1 The Owner shall have the right, but not the obligation, to require the Contractor to remove and replace, with a person acceptable to Owner, promptly after notice from Owner, any employee of Contractor or Subcontractor who: (1) has engaged in conduct on Owner's property that is contrary to the requirements of any applicable law, the Contract Documents, or any rule or directive of Owner relating to conduct on Owner's property; or (2) is incapable of fulfilling its responsibilities in connection with the Project.

§ 3.4.4 Substitutions: Substitutions may be proposed by the Contractor after award of Contract if, and only if, all specified materials, products or equipment are removed from, or becomes unavailable in, the market place after execution of the Contract and only at "no change" or "credit" to Contract amount. Such substitutions shall comply with the following requirements:

- .1 The materials, products and equipment described in the Contract Documents establish the standard of required quality, function, dimension and appearance expected. Substitution requests will be considered only if these standards are met, or exceeded, and the Architect and Owner subsequently approve the substitutions
- .2 Each request for substitution shall be submitted on forms provided by Architect and shall include:
 - (a) The name of the material, product or equipment item for which substitution is requested and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for a complete evaluation.
 - (b) A statement setting forth any changes in other materials, products, equipment or other Work that incorporation of the substitution would require, shall be included.
- .3 The burden of proof of the merit of the proposed substitution is upon the proposer.
- .4 The Architect's decision of approval or disapproval of a proposed substitution shall be final and will be set forth in writing. Should the Architect not approve the proposed substitution, the cost of the Architect's and his consultant's review of any subsequent proposed substitutions for the material, product or equipment shall be deducted from the Contract Sum. The rate for the Architect's and his consultant's review shall be one-hundred seventy-five dollars (\$175) per hour of professional time expended for the review.
- .5 Contractor's Responsibilities: If any of the following conditions occur due to substitutions, the Contractor making the substitution shall bear the cost of such conditions, including payment for services rendered by the Architect:

- (a) Redesign required for any of the Work.
- (b) Material or quantity changes for any of the Work.
- (c) Delays in any of the Work.
- (d) Request for information generated due to substitutions.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new, and of recent manufacture, unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work ~~the Contract Documents require or permit~~. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished by it. Unless otherwise specified elsewhere, all Work shall have a Warranty Guarantee for one (1) year. Warranties and Guarantees shall become effective on the Date of Final Completion of the entire Work unless otherwise provided in any Certificate of Completion approved by the parties in writing.

§ 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 Contractor and/or its successors and assigns will be responsible for and shall correct any defects due to faults in labor and materials which may occur within one (1) year after Final Completion payment has been made, except where sections of the specifications call for a longer period of time. The cost of correcting such defective work, including the cost of all damages of any kind sustained by the Owner, shall be borne by the Contractor at its sole cost and expense. All corrections to defective work shall be made at the convenience of the Owner.

§ 3.5.3 The warranty provided in Paragraphs 3.5.1 and 3.5.2 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law. The warranties required under the Contract Documents shall be extended to include the performance of any and all items of Work specified under the proprietary, patented, and other specified method as well as procedures specifically required by the Contract Documents, thereby not relieving the Contractor of its general warranty obligations.

§ 3.5.4 The Contractor shall deliver to the Owner upon completion of all Work under his Contract, his written guarantee made out to the Owner and in a form satisfactory to the Owner, guaranteeing (and he does hereby so guarantee) all of the Work under the Contract to be free from faulty materials, and free from improper workmanship, and guarantee against injury from proper and usual wear, and aging. This guarantee shall be made to cover (and does cover) a period of one (1) year from the date of Final Completion of all Work under the Contract, or for a longer period where so stipulated in the Contract Documents.

§ 3.5.5 The warranties set forth herein shall survive expiration and/or termination of this Contract.

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

§ 3.5.7 The Contractor shall 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 shall perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.5.8 The Contractor will exercise its best efforts to service and to enforce for the benefit of the Owner all manufacturer's warranties on all materials, equipment and fixtures incorporated into the Work.

§ 3.5.9 All corrections to defective or deficient Work, materials or equipment shall be made at the convenience of the Owner.

§ 3.6 Taxes

§ 3.6.1 Except as otherwise set forth below, The Contractor shall pay applicable sales, consumer, use and similar taxes for the Work or portions thereof 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 The Owner is a school district of the State of New York, an organization which is exempt from payment of sales and compensating use taxes of the State of New York and the cities and counties therein, and with Chapter 32 of the Internal Revenue Code, in accordance with all applicable state laws and regulations. These taxes are not to be included in bids.

- .1 Exception: Plumbing and Drainage Contractor/Subcontractor to obtain and pay for all necessary connection taxes and other service charges required by local sewer or water authorities to complete plumbing systems."
- .2 Exemption certificates will be furnished to the Contractor by the Owner.

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, ~~assisted by~~through the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

- .1 The Contractor shall promptly deliver copies of such documents to the Owner.
- .2 If in connection with the Project, the Owner has obtained certain permits, licenses or agreements for the Project, the Owner will furnish copies of these documents to the Contractor. It is the Contractor's responsibility to comply with any conditions or limitations placed on the Project by these permits. The Contractor shall fully cooperate with the Owner in meeting the permit requirements and accommodations of regulatory inspections/directives.

§ 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. If the Contractor fails to give such notices as applicable to the performance of the Work, the Contractor shall be liable for and shall indemnify and hold harmless the Owner against any and all resulting fines, penalties, judgments or damages, including reasonable attorney's fees, imposed on or incurred by the parties indemnified, as a result of such failure by the Contractor. Contractor shall pay any costs or fees incurred to come into compliance, any fines or penalties imposed for violations thereof and any costs or fees incurred by the Owner due to any such violations.

§ 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. In the event any violations are placed upon the premises by any public authority as a result of the Contractor's fault, in connection with the Work, the Contractor shall be solely responsible therefore and shall bear all costs attributable thereto. Final payment in an amount at least sufficient to correct such violations as determined by the Architect shall be withheld until all such violations are cured of record.

§ 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, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, 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, in consultation with the Construction Manager, 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, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either 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, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

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

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

§ 3.9 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. Prior to starting the work, the Contractor shall designate a competent project manager, superintendent and other key individuals who shall be assigned to the project through and including Final Completion. Such designation shall be in writing and provided to the Architect, Construction Manager, and Owner. The Superintendent shall be in attendance at the project site throughout the work, including completion of the punch list. The Superintendent shall, during the performance of the work, remain on the project site not less than eight hours per day, five days per week, until termination of the contract, unless the job is suspended or work is stopped by the Construction Manager or Owner. The Superintendent shall not be employed or used on any other project during the course of the work. The Superintendent shall be approved by the Owner in its sole discretion. Said representative shall be qualified in the type of work to be undertaken and shall not be changed during the course of construction without the prior written consent of the Owner. Should an approved representative thereafter leave the Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in the Contractor's representatives if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option be terminated for cause. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding as if given to the Contractor. The Owner shall have no obligation to direct or monitor the Contractor's employees. All references herein to the Superintendent shall be taken to mean the Contractor's Superintending staff.~~

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the

Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager 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, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 The Contractor shall coordinate and supervise the work performed by subcontractors so that the work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the work. The Contractor and all subcontractors shall afford each trade reasonable opportunity for the installation of their work and the storage of their materials.

§ 3.9.5 It is required of any and all supervisory personnel proposed for use by any Contractor that said personnel be versed in the English language or, said contractor shall furnish a full-time on-site interpreter to facilitate communications between the Owner's representative and the Architect.

§ 3.9.6 The Contractor shall employ a competent senior superintendent. Such superintendent may not be replaced during the duration of the Project including the completion of Punch List, unless approved by Architect and the Owner's Representative.

§ 3.9.7 Contractor to provide resume of Contractor's Superintendent to the Owner, Architect and Owner's Representative.

§ 3.9.8 Contractor shall furnish the Owner's Representative in writing the names, 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.

§ 3.9.9 The Contractor shall attend progress meetings with the Owner's Representative and such other persons the Owner may wish to have present. The progress meetings shall include all key personnel on the job, including the Contractor and Sub-contractors, or other persons in charge of various phases of the work.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, 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. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

§ 3.10.1.1 Submission of an accepted Construction Schedule shall be a prerequisite to initial payment. If the schedule is not submitted by said dates the Contractor has acknowledged his approving the Owner to complete a schedule for the Contractor. Such schedule will become the product and ownership of the Contractor and the Contractor will be back-charged all costs pertaining to the service of producing the schedule. The Contractor shall provide revised schedules at appropriate intervals as required by the Conditions of the Work and Project.

§ 3.10.1.2 Revisions to schedule shall be approved by the Owner.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit ~~a submittal~~the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager'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 Construction Manager and 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.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

§ 3.10.5 All Construction Schedules are the product and ownership of the Contractor.

§ 3.10.6 The Construction Schedule.

§ 3.10.6.1 The Construction Schedule shall be in a detailed precedence style critical path method (CPM) or Primavera-type format satisfactory to the Owner, the Owner's Representative and the Architect which shall also:

- (a) provide a graphic representation of all activities and events that will occur during performance of the work including the submission, review and approval of all submittals (i.e. Shop Drawings, etc.) required by the Contract Documents;**
- (b) identify with each phase of construction and occupancy; and**
- (c) set forth dates that are critical in insuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as the Milestone dates).**

§ 3.10.6.2 Upon review and acceptance by the Owner and the Construction Manager of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the agreement as Exhibit "A". If not accepted by the Owner and the Construction Manager, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Construction Manager and re-submitted for acceptance.

§ 3.10.6.3 The Contractor shall monitor the progress of the work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays.

§ 3.10.6.4 The accepted construction schedule shall be dated to reflect actual conditions (sometimes referred to as progress reports) as set forth in Paragraph 3.10 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the contract time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.6.5 The construction schedule shall be updated at least once a month or more frequently if requested. The Contractor shall furnish the Owner, Owner's Representative and Architect with sufficient copies of the original schedules and all updated schedules as the Owner, Owner's Representative, or Architect may require.

§ 3.10.6.6 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule and shall not be construed as or deemed to constitute an acceleration directive by the Owner.

§ 3.10.6.6.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Paragraph 3.10.5.

§ 3.10.6.6.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Paragraph 3.10.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6.6.3 The Owner reserves the right to withhold payment until such time as the Contractor submits a daily schedule showing work to be again on schedule with the Construction Schedule and performing per revised schedule, without additional cost to the Owner.

§ 3.10.7 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the owner's premises or any tenants or invitee thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling or performance of the Work under this Paragraph 3.10.5 may be grounds for an extension of the Contract Time, if permitted under Paragraph 8.3.1 if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the contract Documents and (2) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.10.8 The various Prime Contractors shall be responsible for the coordination and orderly arrangement of the various equipment, lines and piping and architectural features, and to avoid any unsightly arrangements in exposed work.

§ 3.10.9 All Construction Schedules are the product and ownership of the Contractor.

§ 3.10.10 Revisions to the schedule shall be approved by the Owner and Construction Manager.

§ 3.10.11 Contractor shall provide all required labor and material to proceed with work as per the Construction Schedule and shall work continuously and expeditiously through project completion.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall maintain and 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 Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed. In accordance with the requirements established in the Project Manual, Specification Section 01720 Project Record Documents is hereby made part of this paragraph.

§ 3.11.1.1 Each Prime Contractor shall provide a copy of daily field reports to the Owner's representative at the end of each week.

§ 3.11.2 The Contractor shall maintain at the Project site, and shall make available to Owner and Architect, one record copy of the Drawings (the "Record Drawings") in good order.

§ 3.11.2.1 The Record Drawings shall be prepared and updated during the prosecution of the Work in accordance with procedures specified in Section 01720.

§ 3.11.2.2 Final payment and any retainage shall not be due and owing to Contractor until the drawings receive the approval from the Architect and the Owner (and all other closeout requirements are met).

§ 3.11.3 The Contractor shall maintain all approved permit drawings in a manner so as to make them accessible to government inspectors and other authorized agencies. All approved drawings shall be wrapped, marked and delivered to the Owner within thirty (30) days of final completion of the Work.

§ 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. One complete set of all product data and approved Shop Drawings shall be submitted to the Owner as part of the close-out 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.

§ 3.12.3.1 The Contractor shall submit for review to the Architect through the Construction Manager samples of materials listed under each section of the specifications. Samples shall be properly labeled for identification, consisting of the following information: job titles, sample number, submission number, and label large enough to receive Architect's stamps.

§ 3.12.3.2 The Contractor shall not commence work under sections of the specifications until the Architect's approval in writing is obtained for all listed samples.

§ 3.12.3.3 The Contractor shall not construe approval of advance samples as total guarantee of acceptance of materials. Materials will be subjected to field inspections, from time to time, as work progresses.

§ 3.12.3.4 Samples of specific manufactured products shall be accompanied with appropriate manufacturer's literature at time of submission.

§ 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 and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are 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 Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

§ 3.12.5.1 The Contractor shall submit all Shop Drawings that are considered long lead items according to the time requirements of Section 01340 of the Specification.

§ 3.12.5.2 The Contractor shall submit to the Architect through the Construction Manager all other shop drawings and schedules in sufficient time to allow at least ten (10) working days for the Architect's review. Approval signatures of contractors and all sub-contractors affected by the work shown therein must appear on all shop drawings before submission to Architect. A copy of Shop Drawings shall be provided for Owner's review as requested.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, 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 reviewed and approved by the Architect.

§ 3.12.7.1 If the Contractor elects to release work without approvals, same shall be at its own risk and expense.

§ 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 Construction Manager and 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 Construction Manager and 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, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy, ~~and accuracy~~ and completeness 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. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

§ 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 Construction Manager and Architect at the time and in the form specified by the Architect.

§ 3.12.11 All shop drawings for any architectural, structural, mechanical or electrical work must be submitted to the Architect through the Construction Manager. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer.

§ 3.12.11.1 Each shop drawing shall contain a title block with provisions for the following:

- (1) Number and Title of Drawing.
- (2) Date of Drawing or Revision.
- (3) Name of project.
- (4) Name of Contractor or Sub-contractor submitting Drawing.
- (5) Specification Section Title and Number.
- (6) Space for Architect's Stamp and Received Stamps.

§ 3.12.11.2 Each shop drawing shall have listed on it all Contract Reference Drawing Numbers plus Shop Drawing Numbers on related work by other Sub-contractors if available.

§ 3.12.11.3 Each shop drawing submission shall have indicated on the drawing under the submission number (whether first, second, third, etc.).

§ 3.12.11.4 Shop drawings for work of one trade shall be checked by Sub-contractors of related trades, and shall have received their stamp of approval before being submitted to the Architect.

§ 3.12.11.5 Each shop drawing submission after the first submission shall be clear of all previous stamps.

§ 3.12.12 Contractor shall communicate and supply Shop Drawings to other Contractors to ensure proper coordination.

§ 3.13 Use of Site

§ 3.13.1 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.

§ 3.13.1.1 The Owner's Representative shall establish the limits of the construction site in addition to any contract limit lines shown on the drawings. The Contractor shall continue his operations within these limits, unless upon written request and reply, a variance is agreed to by the Construction Manager and the Owner. The Contractor shall be responsible for trespassing on and/or damage to other property by any of his employees or his subcontractors' employees.

§ 3.13.1.2 The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents.

§ 3.13.1.3 The Contractor shall be required to perform the work of the Project with no interruption to the School District's operations. Any work which will interfere with the School District's operations shall be performed on evenings and weekends when the Owner's facilities are not in operation. All costs incurred by the Owner to make the facilities available during those times shall be borne by the Contractor. The Owner reserves to itself the right to determine what work will "interfere" with its operations and said determination shall be final.

§ 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. Only materials and equipment which 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 is to 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. The Contractor shall be held responsible for repairs, patching, or cleaning arising from such use.

§ 3.13.2.1 The Contractor shall provide all temporary access walkways, both interior and exterior, temporary partitioning and the like necessary to complete the operations. The Contractor shall maintain in an unobstructed condition all entrances and/or exits from present buildings.

§ 3.13.3 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.

§ 3.13.4 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner. Without limitation of any other provision of the Contract documents, the Contractor shall use his best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work the Contractor finds compliance with any portion of the rules and regulations to be impracticable, setting forth the problems of such compliance and

suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations. The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site and the Building.

§ 3.13.4.1 All Contractor shall confine their use of the premises for all purposes, to the areas occupied by the construction and related storage areas as and if shown.

§ 3.13.4.2 The responsibility for the safe working conditions at the site shall be the Contractor's. The Architect, Owner's Representative and Owner shall not be deemed to have any responsibility or liability in connection therewith.

§ 3.13.5 Contractor's, their workers, suppliers, etc. will be held to adhere strictly to the requirements hereinbefore stated, and shall not occupy or carry traffic through other parts of the site or interior of present buildings except by specific permission of the Construction Manager.

§ 3.13.6 The Contractor shall repair or replace any existing trees, shrubbery or other planting damaged by operations and/or workers employed in performance of its contract.

§ 3.13.7 Contractor shall insure 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 shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall 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 Building in the event of partial occupancy, as more specifically described in Paragraph 9.9.

§ 3.13.7.1 The Contractor shall provide full and free access for the Architect, Owner's Representative, Owner and/or their representatives, to inspect job materials, equipment, fabrication, facilities, and storage locations, at and away from the job site.

§ 3.13.8 Employees, vehicles, equipment and material of the Contractor and of all others utilized by the Contractor for the performance of its work, shall enter onto the construction site only at those locations designated or approved by the Construction Manager.

§ 3.13.9 The Contractor shall familiarize itself with any access and storage requirements set forth in the Supplementary Conditions and Division 1 and shall be subject to them. The Contractor shall properly maintain all access to work and storage areas so that there will be continuous unimpeded access to the work site in all seasons of the year, on all regular working days and all regular working hours of any and all trades employed by all contractors during work at this site.

§ 3.13.10 Only such vehicles, trucks and equipment shall be parked or stored within the work areas are absolutely necessary for performing the work, for the length of time that particular phase of work is performed. All other contractor's vehicles and/or employees and/or workers' vehicles including passenger cars shall be parked off the site. There are no exceptions to the rule.

§ 3.13.11 It shall be the responsibility of the Contractor to provide necessary and required security measures to adequately safeguard the construction site from vandalism and intrusion of unauthorized persons.

§ 3.13.11.1 The Contractor shall submit the means and methods of security to the Owner through the Owner's representative for approval. The project site must be secured 24 hours a day, seven (7) days a week including holidays.

§ 3.13.11.2 All workers and employees of any Contractor are prohibited from:

1. Trespassing or leaving any vehicle on any property not assigned by the Owner as set aside for the use of the Contractor.

2. leaving any vehicle on the grounds unless it is locked and the ignition keys removed.

§ 3.13.11.3 All employees or persons entering the property surrounding the facilities affected by the construction are restricted to the immediate area of work. Only persons having official business will be admitted to the construction site.

§ 3.13.11.4 Rules of Conduct

1. No smoking is allowed anywhere on school property per the New York State law. Violators are subject to a \$1,000 fine and/or banishment from the property.”
2. No drinking of alcoholic beverages or use of controlled substances allowed on the grounds. No reporting to work impaired by alcohol or controlled substances allowed. The Contractor bears the responsibility of determining if its, or its subcontractors, employees are impaired which would jeopardize the safety of the public, the employees of other Contractors and their Subcontractors, the Owner, Architect, and Construction Manager.”
3. All Contractors, subcontractors, suppliers and their employees are to refrain from conversing with school personnel and students. Any construction employees found doing so will be removed from the site. NO COMMUNICATION BETWEEN WORKERS AND STUDENTS WILL BE TOLERATED.”
4. All Contractors, subcontractors, suppliers, and their employees are to refrain from using indecent language. All doing so will be removed from the site. Artwork and decoration found on vehicles belonging to Contractors or Subcontractor’s employees parked on or near the school property which contain indecent language or pictures shall either be covered or removed from the location.”
5. All construction personnel to wear photo ID badges. Photo ID badges are to be provided by the Contractor and receive Owner’s approval.”
6. The use of radios, tape players, and the like is prohibited within the job site.

§ 3.14 Cutting and Patching

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

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

§ 3.14.3 Only trades persons skilled and experienced in cutting and patching shall perform such work.

§ 3.14.4 Where required: Each Contractor before starting work shall consult with the Construction Manager and other Contractors to determine locations and sizes of required chases and openings for others. Construct chases and leave openings at proper locations and size to receive work of others. After work of others has been installed, fill in openings and/or patch around installed materials. After executing the above procedure, if chases, sleeves or openings are required after floors, walls, etc. are in place, the Contractor requiring such chases, sleeves or openings shall be responsible for cutting and patching as required for his work.

§ 3.14.5 The Contractor shall not cut, patch, damage or alter installed work, without the Architect’s consent.

§ 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, and shall leave the entire area clean or its equivalent.

§ 3.15.1.1 All Contractor's work areas shall be kept clean each day, of refuse, including containers, cups and the like. The facilities will remain in operation during the course of the entire construction operation. All Contractors performing work on this Contract shall schedule their work so as not to interfere with any traffic to and from the required areas of use. The Contractor shall be responsible for maintaining all traffic, and shall provide all barriers and protection as required to safeguard the work and the public and the occupants of the building during construction. The Prime Contractors shall comply with all fire code regulations during construction. They include vehicular parking, smoke partitions, rescue window obstructions, use of extension cords. The fire code is available for reference at the Buildings and Grounds office.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor. Each Contractor shall be responsible for cleaning their rubbish daily and removing all rubbish from the interior and exterior site weekly or when otherwise requested by the Owner. The General Contractor shall broom sweep all construction areas at least every Friday. Surfaces shall be left clean of mortar and paint spots and the like. The Contractor shall work in a condition approved by the Construction Manager. An inspection will occur on Friday afternoon and failure to properly clean will result in the Owner engaging a cleaning company each time the requirement is not met, without prior notification to the Contractor. The cost will be divided among each Contractor who has not cleaned their debris and shall include any custodial overtime, Construction Manager's administration fees, etc.

§ 3.15.3 Refer to Section 01710 Cleaning, for additional cleaning requirements.

The Contractor shall keep the premises on the outside and inside of the building clean during and after each workday of refuse, including containers, cups and the like. Comply with Division 1 for additional requirements.

§ 3.15.4 Final Cleaning

- A. General: General cleaning during construction is required by the General Conditions and included in Division 1.
- B. Final Cleaning: Clean each surface or unit to the condition expected in normal commercial building cleaning. Comply with manufacturer instructions. Complete the following cleaning operations before requesting inspection for Certificate of Substantial Completion.
 - 1. Clean transparent materials including glass in doors windows. Replace any damaged glass.
 - 2. Clean exposed finishes to a dust free condition, free of stains, films and similar foreign substances. Clean floors as recommended by the manufacturers if new, if existing carpeted floors shall be vacuumed and wood, ceramic tile and vinyl tile floor floors shall be mopped.
 - 3. Wipe surfaces of mechanical and electrical equipment. Remove excess lubrication and other substances. Clean plumbing fixtures to a sanitary condition. Clean light fixtures and lamps.
- C. Removal of Protection: Remove temporary protection and facilities installed for protection of work during construction unless otherwise directed by the Owner, Architect or Owner's Representative.
- D. Compliance: Comply with authorities having jurisdiction and safety standards for cleaning. Do not burn waste materials. Do not discharge volatile, harmful or dangerous materials into drainage systems. Remove waste materials from the site and dispose of in a lawful manner.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, 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, Architect, or Construction Manager. 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 through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, ~~and each of their Construction Manager's and Architect's~~ consultants, and agents and ~~officers 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; or arises out of operation of law as a consequence of any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of the above may be liable, regardless of whether any of them has been negligent. 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.

§ 3.18.2 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.

§ 3.18.3 Unless otherwise stated in the Agreement, the Contractor shall, before commencing work, take out and pay for such insurance as may be required to comply with the indemnification and hold harmless provisions outlined under Article 3.18.1, and 3.18.2, and 3.18.3.

§ 3.18.4 Except for the special agreement in paragraph 3.18, nothing contained in the Contract Documents shall be construed to create any contractual relationship of any kind between the Architect or any of his agents or employees and the Contractor.

§ 3.18.5 A certificate of the required insurance naming the Architect, Engineers, Owner, Construction Manager, Consultants, Sub-consultants and other such professional parties shall be submitted prior to the start of work. Said insurance shall be maintained through the entire project life. (Refer to insurance section of specifications).

§ 3.18.6 The Contractor shall indemnify and hold harmless the Owner, Architect and Construction Manager from any and all claims, damages, losses, suits, obligations, fines, penalties, costs, charges, and expenses which may be imposed upon or incurred by or asserted against any of them by reason of act or omission of such Contractor or any person or firm for whose acts such Contractor may be liable, with respect to such Contract or the performance or failure to perform the Work under such Contract.

§ 3.19 Daily Records Clause

§ 3.19.1 The Contractor shall prepare and maintain Daily Inspection Records to document the progress of the work on a daily basis. Such daily records shall include a daily accounting of all labor and all equipment on the site for the Contractor and all subcontractors, at any tier. Such daily records will make a clear distinction between work being performed under Change Order, base scope work and/or disputed work.

§ 3.19.2 In the event that any labor or equipment is idled, solely as a result of Owner actions or inactions, the daily records shall record which laborers and equipment were idled and for how long. In the event that specific work activities were stopped, solely as a result of Owner actions or inactions, and labor and equipment was reassigned to perform work on other activities, the daily records will make a clear record of which activities were stopped and where labor and equipment was redirected to.

§ 3.19.3 Such daily records shall be copied and provided to the Owner at the end of every week.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 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 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or 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, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents.

The Owner and Construction Manager 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 Construction Manager 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 other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work. All costs made necessary by such failure, including those of repeated procedures shall be at Contractor's sole expense, including reasonable compensation for Architect's and Construction Manager's services and expenses.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means,

methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.17 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 Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.19 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 so rendered in good faith.

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

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request 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 provide material and/or labor for the Project on or off the site, or to otherwise furnish labor, material or other services with respect 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 other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

§ 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.

§ 5.1.3 The term “Specialist” or “Specialty Contractor” as used in these specifications shall mean an individual or firm of established reputation, or, if newly organized, whose personnel have previously established a reputation in the same field, which is regularly engaged in, and which maintains a regular force of workers skilled in either manufacturing or fabricating items required by the contract, installing items required by the Contract, or otherwise performing work required by the Contract.

Where the Contract Specifications require installation by a “Specialist”, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform such work under the manufacturer’s direct supervision. All other requirements and provisions contained in these documents pertaining to subcontractors and sub-subcontractors are applicable to Specialty Contractors.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract but no more than thirty (30) days after receipt of official notice of award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.1.1 Refer to Information to Bidders for requirements for delivery of a list of subcontractors to Architect’s office after receipt of bids and before award of Contract.

§ 5.2.1.2 Subcontractors will not be acceptable unless, when required by the Construction Manager, evidence is furnished that the proposed subcontractor has satisfactorily completed similar subcontracts as contemplated under this prime contract, and has the necessary experience, personnel, equipment, plant, and financial ability to complete the subcontract in accordance with the intent to the Documents.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager 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 shall be allowed where a Subcontractor is rejected by the Owner for being unqualified to perform the particular work subcontracted by the Contractor or for having too many current projects handled by insufficient personnel or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.~~

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

§ 5.2.5 Notwithstanding any other provision of the Contract Documents, Contractor shall perform at least twenty-five percent (25%) of the field work by its own employees.

For the purpose of the preceding sentence, any part of the work performed by supervisory personnel (persons above level of foreman) or by the office personnel shall not be considered part of the work performed by the Contractor's employees. Such items as bonds, certificates, shop drawings and similar items do not count towards the twenty-five percent (25%) requirements.

§ 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, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager 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.

§ 5.3.1 The Contractor shall not enter into any subcontract, contract, agreement, purchase order or other arrangement for the furnishings of any portion of the materials, services, equipment or Work with any party or entity if such party or entity is an Affiliated Entity, unless such Arrangement has been approved by the Owner, after full disclosure in relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the Contractor with respect to which the Contractor has direct or indirect ownership or control, including, without limitation,

- .1 Any entity owned in whole or in part by the Contractor;
- .2 Any holder of more than ten percent (10%) of the issued and outstanding shares of, or the holder of any interest in, the Contractor; or
- .3 Any entity in which any officer, director, employee, partner or shareholder or member of the family of any of the foregoing persons) of the Contractor or any entity owned by the Contractor has a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, agent or shareholder.

§ 5.3.2 The Contractor shall promptly notify the Owner, the Construction Manager, and Architect of any material defaults by any Subcontractors. Notwithstanding any provision contained in this Article 5 to the contrary, it is hereby acknowledged and agreed that the Owner has in no way agreed, expressly or impliedly, nor will the Owner agree, to allow any Subcontractor or other material supplier or worker employed by the Contractor the right to obtain a judgment or decree against the Owner for the amount due it from the Contractor.

§ 5.3.3 The Contractor shall check record drawings each month. Written confirmation that the record drawings are "up to date" shall be required by the Construction Manager prior to approval of the Contractor's monthly payment requisition.

§ 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, provided that the Owner shall not be under any obligation to compensate the Subcontractor with respect to amounts that the Owner has already paid to the Contractor for such Subcontractor's work.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall not 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, provided that the Owner shall not be under any obligation to compensate the Subcontractor with respect to amounts that the Owner has already paid to the Contractor for such Subcontractor's work.

All Subcontracts over \$5,000 shall be in writing.

§ 5.4.4 Each Subcontract shall specifically provide that the Owner shall be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

§ 5.5 Owner Payment to Subcontractors

§ 5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner, Construction Manager, or Architect fails to approve any application for payment, that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount so paid the Subcontractor shall be deducted from the payment to the Contractor.

§ 5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 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 the Contractor sustain any damage or delay through any act or omission of any other Contractor having a contract with the owner for the delivery of materials, supplies, equipment, plant or appliances, or should the contractor sustain any damage or delay through any act of omission of a sub-contractor, 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 the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

~~§ 6.1.3~~ 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.

§ 6.1.2.1 Where the term "Contractor" or "Prime Contractor" is used in the General Conditions, Supplementary General Conditions, and other Contract Documents, it shall mean the Contractor who executed the Owner-Contractor Agreement.

§ 6.1.2.2 Where the term "separate contractor" is used in this Article it shall mean other contractor performing construction or operation on the site not included in the Project.

§ 6.1.3 The Contractor shall not interfere with the erection, installation or storage upon the premises of any work, materials, supplies or equipment not included in the Work, but which is to be performed and furnished by other Contractors, and the Contractor shall properly connect and coordinate the work therewith. The Contractor shall be responsible for the coordination and intermeshing of the work of his various sub-contractors and the work of other Contractors with the work.

§ 6.1.4 All Contractors, including the Owner's Contractors, shall cooperate with each other in the installation and construction of each contractor's work and in such manner as the Owner and/or Construction Manager may direct. All Contractors shall control and coordinate the work of their subcontractors, if any. The Owner and/or Construction Manager shall approve or require the modification of the work schedules of all contractors to the end of the Project so the whole Project may be progressed, as expeditiously as possible, as one unit. The Award of more than one Contract for the Project requires sequential or otherwise inter-related contractor operations, and may involve inherent delays in the progress of any individual contractor's work. Accordingly, the Owner and/or Construction Manager cannot guarantee the unimpeded operations of any contractor. Each Contractor acknowledges these conditions and understands that he shall bear the risk of all ordinary delays caused by the presence or operations of other contractors engaged upon the Project and ordinary delays attended upon the approved Construction Schedule.

§ 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

§ 6.1.6 The Owner reserves the right to perform work on any phase of the project through a change order plus appropriate administrative costs when the established milestones become jeopardized due to any contractor's inaction. Inaction includes, but is not limited to, failure to man the work properly, failure to prosecute approved submittals, failure to prosecute contracts and purchase orders, and other acts or omissions which are deemed by the Owner to be in the best interests of the work."

During the progress of the work, other contractors, utilities and the Owner's own personnel (referred to collectively as "Others") may be engaged in performing work or may be awarded other contracts for additional work on this project. In the event, the Contractor shall coordinate the work to be done hereunder with such Others and the Contractor shall fully cooperate with such Others, and carefully fit its own work to such Other's work.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other 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.

§ 6.2.1.1 Unless directed by the Owner to the contrary in the Invitation, Advertisement or Instructions to Bidders, the Contractor shall coordinate its operations with those of other contractors, whether prime contractors or separate contractors, and shall be responsible for the coordination of the work of its various subcontractors which shall be arranged and conducted to avoid delays.

§ 6.2.1.2 The Contractor shall not commit or permit any act which will interfere with the performance of work by any separate or Prime Contractor involved with the work. If the Contractor sustains any damage through any act or omission of other contractors or utilities having a Contract with the Owner for the performance of work upon the site or of work which may be necessary to be performed for the proper execution of the work to be performed for the proper execution of the work to be performed hereunder, or through any act or omission of a subcontractor of such contractor and/or utility, the Contractor shall have no claim against the Owner for such damage, but shall have a right to recover such damage from the contractor and/or utility under the provision similar to the following provisions which have or will be inserted in the contracts with such contractors and/or utilities.

Should any other contractor having or who shall hereunder have a Contract with the Owner for the performance of Work upon the site, sustain any damage through any act or omission of the Contractor hereunder or through any act or omission of any subcontractor of the Contractor, the Contractor agrees to reimburse such other Contractor for all such damages and to defend at its own expense any suit based upon such claim.

The Contractor agrees to defend and indemnify Owner, Architect, Construction Manager, each of their Consultants and Sub-consultants, from all claims made against any of them arising out of Contractor's acts or omissions of the acts or omissions of any subcontractor of the Contractor.

The Owner's right to indemnification hereunder shall in no way be diminished, waived or discharged, or by the exercise of any other remedy provided for by the contract or by law.

When the work of the Contractor or its subcontractors overlap or dovetail with that of other Contractors, material shall be delivered and operations conducted to carry on the work continuously, in an efficient, workmanlike manner.

In case of interference between the operations of different Contractors, the Architect or Owner's Representative, will be sole judge of the rights of each Contractor and shall have the authority to decide in what manner the work may proceed, and in all cases its decision shall be final.

Any decision as to the method and times of conducting the work or the use of space as required in this 6.2.1, shall not be made the basis of claims for delay or damages.

§ 6.2.1.3 The Contractor, including its subcontractors, shall keep itself informed of the progress of other contractors and shall notify the Architect or Owner's Representative immediately of lack of progress on the part of the other Contractors where such delay will interfere with its own operations.

Failure of a Contractor to keep informed of the work progressing on the project and failure to give notice of lack of progress by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's own work.

§ 6.2.1.4 Delays or oversights on the part of any contractor or subcontractor in getting any or all of their work done in the proper way, thereby causing cutting, removing and replacing work already in place, shall not be the basis for a claim for extra compensation.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and 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 or other Contractors' 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 Contractors or other Contractors that are not apparent.~~

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, 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 delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.

§ 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, Separate Contractors, or other Contractors as provided in Section 10.2.5.

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other 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 Construction Manager, with notice to 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 and not in installments for each trade thereafter. All partial change order submissions will be rejected and returned to the contractor for completion.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as otherwise expressly permitted in Articles 7 or 9, a change in the Contract Sum shall be accomplished only by Change Order. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of 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.

§ 7.1.4 The Contractor shall notify the Architect and Construction Manager within three (3) days of any change in the work.

§ 7.2 Change Orders

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 A Change Order, when issued, shall be full compensation, or credit, for the extra Work performed, omitted, or substituted. It shall show on its face, any adjustment in time for completion of the Project as a result of the Change in the Work. Each Change Order shall include all costs related thereto, including all overhead, miscellaneous expenses, and incidentals. All partial change order submissions will be rejected and returned to the Contractor for completion

§ 7.2.3 A change order proposal prepared by the Contractor shall include the following, as described below:

1. the actual cost to Contractor of labor for base wages only, including required union benefits as set forth in the applicable collective bargaining agreement, plus premiums required to be paid by Contractor for liability and workers' compensation insurance for such labor, plus state taxes for unemployment insurance and federal social security taxes, plus an allowance of 10% for Contractor's profit, supervision, administrative and all other overhead, indirect costs, and additional performance, labor, and material bond costs related to the labor portion of the Change; plus
2. The actual cost to Contractor of materials incorporated or to be incorporated into the Project, including transportation to the site, plus maintenance, operation and rental, or reasonable rental value, of Contractor owned equipment, other than small tools, plus an allowance of five percent (5%) for Contractor's profit, supervision, administrative and all other overhead, indirect costs, and additional performance, labor, and material bond costs related to the materials portion of the Change.

§ 7.2.5 Should Contractor be required or permitted to subcontract all or a portion of the Change to be performed on the basis of the cost of labor and materials, payments to a Subcontractor of any tier that actually performs the Change shall be governed by the provision in subparagraph c above with the exception of the allowance stipulated therein. In the event of subcontracting the Change, the Contractor will be entitled to an allowance of ten percent (10%) for labor and five percent (5%) for material instead of any other referenced allowance and it shall be the responsibility of the Contractor and its Subcontractor(s) of all tiers to allocate the allowances set forth in this subparagraph between and amongst themselves.

§ 7.2.6 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 below. Where major cost items are sub-contracts, they shall be itemized also. All proposals without such itemization will be returned to the Contractor for resubmission, and Owner may issue a Construction Change Directive in lieu thereof.

- | | | |
|-----|--|-------|
| 1. | <u>Materials (Itemized Breakdown)</u> | _____ |
| 2. | <u>Rental of Equipment (Itemized Breakdown)</u> | _____ |
| 3. | <u>Subtotal (Add lines 1-2)</u> | _____ |
| 4. | <u>Overhead and Profit (5% x line 3)</u> | _____ |
| 5. | <u>Subtotal (Add lines 3-4)</u> | _____ |
| 6. | <u>Labor (Itemized Breakdown)</u> | _____ |
| 7. | <u>Insurance on Labor (Workmen's Comp., etc.)</u> | _____ |
| 8. | <u>Subtotal (Add lines 6 and 7)</u> | _____ |
| 9. | <u>Overhead and Profit (10% x line 8)</u> | _____ |
| 10. | <u>Subtotal (Add lines 8 and 9)</u> | _____ |
| 11. | <u>Sub-Contract Work (Include Itemized Breakdown. Sub-contractor's overhead and profit allowed is 5% labor only)</u> | _____ |
| 12. | <u>Prime Contractor Overhead and Profit (5% x line 11)</u>
<u>Note max markup on Material & Equipment is 5% between sub and Prime</u> | _____ |
| 13. | <u>Subtotal (Add lines 11 & 12)</u> | _____ |
| 14. | <u>Subtotal (Add lines 5, 10, and 13)</u> | _____ |
| 15. | <u>Bond charges (2% x line 14)</u> | _____ |
| 16. | <u>TOTAL CHANGE ORDER</u>
<u>(Add lines 14 and 15)</u> | _____ |

§ 7.2.7 For additional bond charges for the total Change Order, two (2%) percent of the cost. This shall apply for Deduct Change Orders as well.

§ 7.2.8 When performing any Work on the basis of the cost of labor and materials, and Contractor or its Subcontractors are permitted or required to perform any overtime work, the cost of labor shall include additional wages over and above straight time rates, as well as wages at straight time rates. However, the allowance set forth in subparagraph 7.2.1.1, if applicable, shall not be computed nor paid with respect to such additional wages. Superintendent or non-working foreman fees are not allowed.

§ 7.2.9 Contractors are strongly urged to refer to the General Conditions for any and all provisions governing additional work and/or changes to the work.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager 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. No change in Contract Time shall be allowed for Change Orders performed by Contractor, except for substantial changes in scope determined by the Owner. In the case of increased scope, it is expected that Change Order Work shall be performed by increased manpower.

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

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

- .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 or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager 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 not to exceed ten percent (10%) for labor and five percent (5%) for materials. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager 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 Construction Manager and Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager 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/or Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be the basis for preparing recorded as a Change Order for final Owner approval.

§ 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 Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The 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 Construction Manager and 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 Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager 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 Construction Manager 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.

§ 7.5 Field Orders

§ 7.5.1 Field Orders are an interpretation of the Contract Documents or an order to do minor changes in the Work. Since time is of the essence, Contractor shall promptly complete the Work directed in the Field Order, which shall be in writing. Failure to proceed with a Field Order, which will adversely impact the completion of the project or delay the work of another contractor, shall be just cause for the Owner taking over the Work, or termination of Contract.

§ 7.5.2 Field Orders are not to be construed as Change Orders. A signed field order is not an approved Change Order.

§ 7.5.3 Neither the Owner, Architect nor Construction Manager shall sign field tickets, work orders or any other document prepared by the Contractor. Should the Contractor desire to record extra work performed, the Contractor may request that the work be monitored by the Construction Manager and submit a copy of the field ticket/work order immediately upon completion of such work. The Contractor may also request a copy of the Construction Manager's log.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.1.5 The Date of Final Completion of the Work is the date all of the Work required under the Contract Documents is completed, and all applicable licenses, permits, certificates, or approvals have been obtained by the Contractor and delivered to the Owner to the extent provided for in the Owner – Contractor Agreement.

§ 8.1.6 Regular School Hours shall mean the time school is in session on any given day. Off Regular Hours shall mean all other time during the day. Regular School Days shall mean days school is in session. (See school calendar)

§ 8.2 Progress and Completion

§ 8.2.1 The date of commencement of the Work shall be as indicated in the Contract Documents. 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. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.2.1 Contractor shall not commence work on the site until two certified copies of all insurance policies as indicated in Article 11, attesting that the required coverage is in force, have been received and accepted by the Owner.

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

§ 8.2.3.1 Contractor shall cooperate with the Owner, Architect, Engineer, Construction Manager and other Contractors on the Project, making every reasonable effort to reduce the Contract Time.

§ 8.2.4 Milestone Dates 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.

§ 8.2.5 The Contractor may request access to the site during times beyond the work hours permitted. Approval is solely at the discretion of the Owner. If approval is given, the Contractor is responsible for paying all additional costs incurred by the Owner, Architect and Owner’s Representative for providing the site to the Contractor during the additional time periods.

§ 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, Architect, Construction Manager, or an employee of any of them, or of the Owner’s own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner ~~pending mediation and binding dispute resolution~~; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines ~~justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine~~ justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if performance of the Work is not, was not or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor’s timely notice to the Owner of the delay, (iii) is of a duration not less than one (1) day and (iv) the Contractor has made all reasonable effort to recover the alleged lost time. No extension of time will be granted for changes in work or labor disputes, picketing, hand billing, refusal to deliver or work stoppages due to asbestos removal and material procurement delays.

§ 8.3.1.1 An extension or extensions, of time may be granted subject to the provisions of this article, but only after written application thereof by the Contractor in accordance with Paragraph 4.3.8.

§ 8.3.1.2 An extension of time shall be only for the number of days of delay which the Architect may determine to be due solely to the causes set forth in the application of extension of time. The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently; but if at all, only the actual period of delay as determined by the Architect.

§ 8.3.1.3 The Contractor shall be responsible for labor peace on the Project and shall at all times exert its best efforts and judgement as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall, at all times, maintain Project wide labor harmony.

§ 8.3.1.4 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 except as specifically provided for elsewhere in these Conditions.

§ 8.3.1.5 All costs for expedited material procurement to meet the schedule shall be the responsibility of the contractor.

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

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ If the Contractor is delayed in completion of the work under the contract by an act or neglect of the Owner or of any other Contractor employed by the Owner, or by changes in the work, or by a priority or allocation order duly issued by the federal government, or by any unforeseeable cause 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, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormally severe weather, or by delays of prime contractors, separate contractors, subcontractors or suppliers occasioned by any of the causes described above, or by delay authorized by the engineer for any cause which the engineer shall deem justifiable, then:

For each day of delay in completion of the work so caused, the Contractor shall be allowed one day additional to the time limitation specified in the Contract, it being understood and agreed that the allowance of same shall be solely at the discretion and approval of the Owner.

NO CLAIM FOR ANY DAMAGES OR ANY CLAIM OTHER THAN FOR EXTENSIONS OF TIME AS HEREIN PROVIDED SHALL BE MADE OR ASSERTED AGAINST THE OWNER BY REASON OF ANY DELAYS CAUSED BY THE REASONS HEREIN ABOVE MENTIONED.

§ 8.3.4 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the contractor for any failure of the Contractor to so complete the Work shall be created or implied.

§ 8.3.5 When the Contract Time has been extended, as provided under this paragraph 8.3, such extension of time shall not be considered as justifying extra compensation to the Contractor for administrative costs of other similar reasons.

§ 8.4 Liquidated Damages

§ 8.4.1 Contractor realizes that time is of the essence on this Contract and the Construction Schedule shall be submitted per Section 3.10.1. In the event the Contractor fails to submit a Construction Schedule by said schedule date, the sum per calendar day, of Three Hundred Dollars (\$300.00) will be subtracted from the Payment due the Contractor or, if the amount due Contractor as Payment is insufficient, any deficiency shall be paid by the Contractor to the Owner.

§ 8.4.2 Contractor realizes that time is of the essence on this Contract and the completion date for any work or the date of Substantial Completion shall be no later than the date indicated in these Contract Documents. The Contractor

understands that substantial disruption of the School District's educational process will occur if the project is not completed by the date of Substantial Completion. In the event the Contractor fails to complete any work or substantially complete the work under this contract by said schedule date, the sum listed below per calendar day will be subtracted from the Payment due the Contractor (or, if the amount due Contractor as Payment is insufficient, any deficiency shall be paid by the Contractor to the Owner per the following table), except in cases where a delay is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, 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 freight embargoes will not constitute a delay excusable under this provision unless approved by the Owner in writing.

Liquidated damages will be assessed in the following amounts for each and every calendar day AFTER such time allowed for completion:

<u>Total Amount:</u>	<u>Amount of Liquidated Damages per Day</u>	
<u>Under \$50,000</u>	<u>\$500</u>	<u>per day</u>
<u>\$50,001 - \$100,000</u>	<u>\$1,000</u>	<u>per day</u>
<u>\$100,001 - \$500,000</u>	<u>\$2,000</u>	<u>per day</u>
<u>\$500,001 - \$1,000,000</u>	<u>\$3,000</u>	<u>per day</u>
<u>\$1,000,001 - \$5,000,000</u>	<u>\$4,000</u>	<u>per day</u>
<u>\$5,000,001 – and over</u>	<u>\$5,000</u>	<u>per day</u>

Within five (5) calendar days from occurrence of any such delay, the Contractor shall notify the Owner in writing of 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. Owner's findings of fact will be final and binding in any litigation.

The said sum per calendar day 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 by reason of delay) Owner may incur as a result of Contractor's breach of Contract. In the event the Contractor fails to complete all work under this contract by said scheduled dates, the Contractor will not be permitted to perform any work during normal school hours. Such work shall only be performed after school hours, Saturdays, Sundays, holidays or periods when school is unoccupied at no additional cost of any kind to the Owner. In addition to Liquidated Damages, the Contractor shall be liable for all additional costs incurred by the Owner to provide staff, Architect and Owner's Representative personnel as required to make facility accessible by Contractor and perform inspections during such off hours.

All costs incurred by the Owner, Owner's Representative, Architect and the cost of additional inspections, at the rate of One Thousand Dollars (\$1000) per inspection (or at hourly rate of \$125.00 per hour per consultant per inspection), will be subtracted from payment due the Contractor. If the amount due the Contractor for payment is insufficient, any deficiency shall be paid by the Contractor to the Owner.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.1.3 Each Application for Payment shall include such instruments, evidence, and materials as Owner or Owner's lender shall require including, without limitation, such requisition forms, disbursements requests, indemnities (including evidence of All Risk physical damage insurance coverage on materials and equipment stored off-site), and undertaking as they may specify and an estimate of the total labor done and materials stored at the site (or other location approved in writing by Owner) or installed in the building, less cost for which payment has been made, and also less retainage. All applications for Payment shall be made on and in compliance with a form acceptable to Owner or Owner's lender, and Architect. Contractor shall supply such additional documentation and information as Owner's lender or its inspecting architect shall request in connection with each disbursement to 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 Construction Manager, 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 Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (1) description of Work (listing labor and material separately), (2) total value, (3) percent of the Work completed to date, (4) value of Work completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent completed and (8) value of Work completed to date. Any trade breakdown which fails to include sufficient detail, is unbalanced or exhibits "front loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work. Breakdown shall include multiple construction site, multiple locations within each site, additions versus renovation work, etc. as required to satisfy State Education Department requirements.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager 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, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Each item listed in the Application for Payment shall have a separate amount for labor and a separate amount for material and other costs.

§ 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 Construction Manager and 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.

§ 9.3.1.3 Until final completion and acceptance of the Work in accordance with Paragraph 9.10, the Owner shall pay 95 percent of the amount of each progress payment due the Contractor.

§ 9.3.1.4 Applications for Payment must be accompanied by any and all releases of liens for previous applications from Contractor and his subcontractors and a sworn and notarized statement that all subcontractors have been paid

to at least ninety-five percent (95%) of previously requisitioned sums. As-built drawings showing all Work up to the time of the Request for Payment shall be prerequisite for making payment.

§ 9.3.1.5 Contractors must submit separate Applications for Payment for each facility or per State Education Department Number. Only one Application for Payment may be submitted for payment for each month.

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

Materials stored off the site will not be conditions for Request for Payment. Additionally, the Contractor must furnish the following information where payment is requested for materials and equipment stored off the project site, as part of its Application for Payment:

1. Type of material must be specifically identified by the Trade Contractor.
2. Trade Contractor must furnish an invoice from his supplier showing the total value of the material and/or equipment being stored off site.
3. Trade Contractor must provide a Certificate of Insurance for the full value of the item plus ten (10%) percent.
4. Trade Contractor must execute a Security Agreement.
5. Trade Contractor must execute a bill of Sale for stored material and/or equipment.
6. Trade Contractor must file a UCC-1 Form with the Security Agreement."

§ 9.3.2.1 Procedures required by Owner shall include, but are not necessarily limited to, submission by the Contractor to the Architect of bills of sale and bills of lading for such materials and equipment, provision of opportunity for Architect's visual verification that such materials and equipment are in fact in storage, and, if stored off-site, submission by the Contractor of verification that materials and equipment are stored in a bonded warehouse.

§ 9.3.2.2 All such materials and equipment, including materials and equipment stored on-site but not yet incorporated into the Work, 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 into the Work, including maintaining insurance coverage on a replacement cost basis without voluntary deductible.

§ 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.

§ 9.3.3.1 The Contractor shall save and keep the Owner and the Owner's property free from all liens and claims, legal or equitable, arising out of Contractor's work hereunder. In the event any such lien is filed by anyone claiming by, through or under the Contractor, the Contractor shall remove and discharge same within ten (10) days of the filing thereof. The Contractor further expressly undertakes to defend the Indemnities at the Contractor's sole expense against any actions, lawsuits or proceedings brought against Indemnities as a result of liens 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 Indemnities referred to collectively as liens in this Paragraph 9.3.3.1. The Contractor hereby agrees to indemnify and hold Indemnities harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond which is: (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than One Hundred Fifty percent (150%) of such lien claim. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of

any responsibilities or obligations under this Paragraph 9.3, including, without limitation, the duty to defend and indemnify the Indemnities. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.3.3.3 Notwithstanding the foregoing, the Owner reserves the right to settle any disputed mechanic's or material men's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments to be made.

§ 9.3.4 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

§ 9.3.4.1 A current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material men with whom the contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material men in the requested progress payment and the amount to be paid to the Contractor from all such Subcontractors and material men;

§ 9.3.4.2 Duly executed waivers of mechanic's and material men's liens from all Subcontractors and, when appropriate, from material men and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and

§ 9.3.4.3 All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 9.3.4.4 All Applications for Payment must be accompanied with certified payrolls for all Contract Work performed. In addition, each Contractor and sub-contractor shall submit to the Owner within thirty days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll record, as provided by Assembly Bill 6394-B amending Article 8, Section 220, of the NYS Labor Law, subscribed and affirmed as true under penalties of perjury. The Owner shall be required to receive and maintain such payroll records. The original payrolls or transcripts shall be preserved for three years from the completion of the Work on the awarded project. An out of state contractor must post a wage rate schedule at the job site.

§ 9.3.5 The Contractor shall submit a "pencil-copy" requisition to the Construction Manager no later than the date as directed by the Construction Manager for work completed up to that day for review with field personnel and for comparison to the Contractor's as-built drawings which shall be updated daily per the General Conditions. After any adjustments are made, the Contractor shall finalize and submit to the Construction Manager no later than the date as directed by the Construction Manager five (5) copies of the requisition, signed and notarized, for the Construction Manager's final approval and signature. The Owner shall make payment within 30 days.

Applications for Payment are to be delivered to the Construction Manager's Long Island office either in person or by mail. Requisitions are not to be delivered to the Project Executive or the Construction Manager at the job site.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager'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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation 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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 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 Construction Manager or Architect.

§ 9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or 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 Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be

necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the 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 or other 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 contractor's failure to give notice of errors and inconsistencies; or
- .9 failure of the Contractor's subcontractors to comply with the mandatory requirements for maintaining record drawings.
- .10 any other reasonable grounds for objection or withholding as provided in the agreements or as permitted by law.

§ 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 or Construction Manager withholds certification for payment under Section 9.5.1, 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 Construction Manager, and both will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project 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 Construction Manager and 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. The Contractor shall also comply with paragraph entitled "Payment by Contractors to Subcontractors" contained in section 106-b of the New York General Municipal Law.

§ 9.6.3 The Construction Manager 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 Owner, Construction Manager and Architect 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, Construction Manager 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 material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4. The Owner shall have no obligation to pay or reimburse a Contractor for

payments to material and equipment suppliers until materials, equipment and supplies have been delivered on-site or to an off-site storage facility which is bonded and secured.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, t~~The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 ~~Failure of Payment~~[Deleted.]

~~If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's 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 Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start up, plus interest as provided for in the Contract Documents.~~

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use; provided, however that as a condition precedent to Substantial Completion that, (1) the Work is operational and usable for the purposes intended; and (2) the Owner has received all Certificates of Occupancy and any permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

When advised by the Contractor that the Work is substantially completed, the Architect and the Contractor shall, within a reasonable time, make a joint inspection of the work and if the Architect shall determine the Work is substantially completed, the Contractor shall submit a substantial completion application.

§ 9.8.1.1 Notifications by the Contractor to the Architect for inspections to confirm Substantial Completion as parts and/or as a whole shall be judiciously and without abusing said process.

§ 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 notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Work, or major portions thereof as contemplated by the terms of the Contract, has been substantially completed the Contractor shall submit to the Owner through the Construction Manager and the Architect an Application for Payment of the remaining amount of the Contract balance. Upon receipt of such application, the Owner shall approve and promptly pay the remaining amount of the Contract balance less two times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably

discharged. As the remaining items of Work are satisfactorily completed or corrected, the Owner shall promptly pay, upon receipt of a requisition through the Construction Manager and the Architect, for those items less an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. Any claims, liens and judgments referred to in this subparagraph shall pertain to the Project and shall be filed in accordance with the terms of the applicable Contract and/or applicable laws.

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

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, 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. The Certificate of Substantial Completion will not be issued until after the Architect and Owner have determined that: (1) the Work and all systems are operational and otherwise complete and ready for unobstructed, lawful use and occupancy by the Owner; (2) the governmental agency that issued the building permit has issued a certificate of occupancy; (3) all testing (including but not limited to TAB, Envelope, Commissioning, etc.) are completed and required corrections revealed by these tests are completed; (4) the Project has been accepted by each regulatory body having jurisdiction, and (5) the only items of Work remaining to be completed are of a minor nature such as touch-up, adjustments, testing, corrections, and omissions to be remedied, as may appear on the final list made during inspection by the Architect and Owner.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 For any uncompleted work at the time of Substantial Completion, the Owner will retain monetized value of the remaining work, i.e. "punch list", times 200 percent as determined by the Construction Manager which will be released upon notification by the Contractor to the Construction Manager that the Work has been completed to the Architect's satisfaction.

§ 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. Such occupancy does not relieve the Contractor from completing the Work within the time period specified. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly 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 after consultation with the Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, 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, and in order to prepare a complete punch list of omissions of materials, faulty workmanship, or any items to be repaired torn out or replaced.

§ 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, nor does it waive the Owner's right to liquidated damages. Further such occupancy alone shall not determine when substantial completion and the performance has been reached.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their 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 Construction Manager's and Architect's final Certificate for Payment or Project 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. All warranties and guarantees required under the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application, no final payment will be issued until all warranties and guarantees have been received and accepted by the Owner. Refer to Section 01701 for additional requirements.

§ 9.10.1.1 If the Work is not accepted by the Owner after final inspection and additional time is required to complete items identified during the final inspection, the date starting the one-year correction period described in Article 12 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 and/or Owner's Representative is required to perform additional final inspections because Work fails to comply with the certifications of the Contractor, the amount of compensation paid to the Architect or Owner's Representative 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 through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) a Punch List Item Letter stating that all items on the punch list have been completed to the Owner's satisfaction, all site documents, all procedures manuals and spare parts, all equipment guarantees and warranties, Contractor Affidavit of Release of Liens, complete set of Shop Drawings and a set of as-built drawings in red ink or other reproducible color except black, (7) a close-out meeting is required to review final documentation. Final approval is given by the Owner; and (8), 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 In addition to the submittals required in Subparagraph 9.10.2 above, the Contractor shall submit separate release or waivers of liens for each subcontractor, material supplier, and others with lien rights against the property Owner, and shall submit a list of such parties.

§ 9.10.2.2 Submittals required above shall be made in accordance with procedure described in the Project Manual.

§ 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 Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and 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 through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

§ 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.

In the event the Contractor does not achieve final completion within thirty (30) days after the date of substantial completion, allowing for any approved extensions of the contract time, Contractor shall not be entitled to any further payment and Contractor hereby agrees that such failure to complete the work within the time set forth above shall constitute a waiver of all claims by the Contractor to any money that may be due. This provision shall not operate as a waiver by the Owner of any claims or remedies of any nature against the Contractor arising out of the Contract.

§ 9.10.6 Contractor shall submit all documentation identified in this section within sixty (60) days from the time the Contractor submits the list of items to be corrected. If the documentation has not been submitted, the Owner will obtain such through whatever means necessary. The Contractor shall solely be responsible for all expenses incurred by the Owner, provided the Owner has advised the Contractor of this action thirty (30) days prior to the culmination date and again, seven (7) days prior to the culmination date by written notice

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. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall provide for the safety and protection of the Project site, all persons who may come in contact with the Work and all real and personal property located at or adjacent to the Project site. Without limiting the foregoing, the Contractor shall, at Contractor's sole cost and expense, take precautions for the safety of, and shall provide 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;
- .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 construction or operations by the Owner, Separate Contractors, or other Contractors.
- .5 the work of the Owner or other separate contractors.
- .6 prior to commencement of the Work, the Contractor shall document existing conditions recording existing damage to construction or property at the site to remain and notify the Construction Manager and Architect of same in writing.

§ 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 health and safety of persons or property or their protection from damage, injury, or loss. The Contractor agrees in working on the Owner's premises, to comply with all applicable codes and health and safety regulations as they apply to the work and as set forth in the Occupational Safety and Health Act of 1970, as revised to date, and any applicable federal, state and/or local laws, rules, regulations and/or executive orders regarding COVID-19.

§ 10.2.2.1 The Contractor agrees, in order that the work will be completed with the greatest degree of safety: To conform to the requirements of the Occupational Safety and Health Act of 1970 (OSHA) as amended and the Construction Safety Act of 1969 as amended, including all standards and regulations that have been since or shall be promulgated by the governmental authorities which administer such acts, and shall hold harmless the Owner, Owner's Representative, the Architect, and all their employees, consultants and representatives from any and all claims, damages, losses, suits obligations, fines, penalties, costs, charges and expenses which may be imposed upon 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.

§ 10.2.2.2 Additional Requirements:

- .1 Ladders and scaffolding shall be in good operating condition. Any damaged ladders, bakers, and rolling scaffolding shall be immediately removed from job.
- .2 Ground properly all electric operated tools.
- .3 Wear protective eye goggles during any cutting, whether by hand or mechanical means.
- .4 Remove nails, screws, bolts and tack strips from floor immediately after demolition.
- .5 Workmen to have proper shoes and clothing as per OSHA recommendation.
- .6 No smoking is allowed in buildings or on School Property. No drinking of alcoholic beverages or use of controlled substances allowed on Owner's grounds. No reporting to work impaired by alcohol or controlled substances allowed. Any employee found to be under the influence of any controlled substance or alcohol will be banned from the site.
- .7 All Contractors are to refrain from conversing with school personnel and students. Any construction employees found do so, will be removed from the site.
- .8 All contractors are to refrain from using indecent language. All doing so, will be removed from the site.
- .9 All construction personnel to wear photo ID badges. Photo ID badges to be provided by Contractor and receive Owner's approval.
- .10 All Contractors and their personnel shall implement and comply with all applicable safety precautions and programs, including New York State, federal and/or CDC guidelines regarding social distancing and the provision of personal protective equipment to the Contractor's employees.

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

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

§ 10.2.4.1 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 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, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. 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, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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.

The Owner, upon acceptance of the Work, will provide and maintain fire extinguishers on the site for the protection of the new and/or altered construction. Any other special precautions for fire protection necessary for the execution of a Contractor's Work shall be the responsibility of the Contractor requiring same and the cost of such precautions shall be paid for by that Contractor. The Contractor is in no way relieved of its responsibility to abide by the Occupational Safety Health Act (OSHA) regulations and for recording and registering accidents by the reporting of accidents to the Construction Manager, Architect and to the Owner.

§ 10.2.9 The Contractor shall promptly report in writing to the Owner, Construction Manager and Architect all accidents arising out of or in connection with the Work which cause death, person injury, or property damage, giving full details and statements or any witnesses. In addition, if death, serious personal injuries, or serious property damages re caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Construction Manager.

The Contractor solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, of the Owner, of the Construction Manager, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the prosecution of the Work, whether said risks are within or beyond the control of the Contractor and whether said risks involve any legal duty, primary or otherwise, imposed upon the Owner or Construction Manager, excepting only risks which arise from fault designs as shown by the plans and specifications or from affirmative acts of the Owner or the Owner's members, officers, representatives or employees committed with intent to cause the loss, damage or injuries hereinafter set forth:

- .1 The risk of loss or damage, includes direct or indirect damage or loss, of whatever nature to the Work or to any plant, equipment, tools, materials or property furnished, used, installed or received by the Owner, the

Construction Manager, the Contractor or any Subcontractor, materialmen or workmen performing services or furnishing materials for the Work. The Contractor shall bear said risk of loss or damage until Final Acceptance of the Work by the Owner or until completion or removal of said plant, equipment, tools, materials or property from the Site and the vicinity thereof, whichever event occurs last. In the event of said loss or damage, the Contractor immediately shall repair, replace or make good any said loss or damage.

- .2 The risk of claims, just or unjust, by third persons against the Contractor or the Owner, the Architect and the Construction Manager on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising or alleged to arise out of or as a result of or in connection with the performance by the Contractor of the Work, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Contractor's operations or presence at or in the vicinity of the Site. The Contractor shall bear the risk for all deaths, injuries, damages or losses sustained or alleged to have been sustained prior to the Final Acceptance of the Work. The Contractor shall bear the risk for all deaths, injuries, damages or losses sustained or alleged to have been sustained resulting from the Contractor's negligence or alleged negligence which is discovered, appears, or is manifested after acceptance by the Owner.
- .3 The Contractor assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all person, whether employees of the Contractor or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the execution of the Work. If any person shall make said claim for any damage or injury, including death resulting therefrom, or any alleged breach of any statutory duty or obligation on the part of the Owner, the Architect, the Construction Manager, servants and employees, the Contractor shall assume the defense and pay on behalf of the Owner, the Architect, the Construction Manager, servants and employees, any and all loss, expense, damage or injury that the Owner or Construction Manager may sustain as the result of any claim. The Contractor agrees to assume, and pay on behalf of the Owner, the Architect, and Construction Manager, servants and employees, the defense of any action at law or equity which may be brought against the Owner, the Architect and the Construction Manager, servants and employees. The assumption of defense and liability by the Contractor include, but is not limited to, the amount of any legal fees associated with defending, all costs of investigation, expert evaluation and any other costs including any judgment or interest or penalty that may be entered against the Owner, the Architect and the Construction Manager, servants and employees, in any said action.

§ 10.2.10 Title to all completed or partially completed work at the job site, and to all materials delivered to and stored at said job site which are intended to become a part of the complete work covered by the Contract, shall be in the name of the Owner. Notwithstanding the foregoing, and prior to acceptance of the complete work by the Owner, the Contractor shall be liable for all loss of or damage to said completed work, partially completed work, materials furnished by the Contractor, and materials or equipment, furnished by others, the custody of which has been given to the Contractor, arising from any cause other than those against which the Owner herein undertakes to carry insurance. In the event of loss or damage from cause other than those against which the Owner undertakes to carry insurance, the Contractor shall replace or repair the said work or materials at his own cost and expense.

The Contractor shall sustain any loss or damage arising from the nature of the work to be done under this Contract or from any unforeseen or unusual obstructions or difficulties which may be encountered in prosecuting the work or from the actions of the elements including water, wind and frost. The Contractor shall maintain suitable adequate safeguards to protect all property and personnel, public or private.

The Contractor's obligations under this Article shall not be deemed waived, limited or discharge by the enumeration or procurement of any insurance for liability for damages. The Contractor shall notify its insurance carrier within twenty-four (24) hours after receiving a notice of loss or damage or claim from the Owner or Construction Manager. The Contractor shall make a claim on its insurer specially under the provisions of the contractual liability overages and any other overages afforded the Owner or the Construction Manager including those of being an additional insured where applicable.

§ 10.2.11 The Contractor shall take all necessary precautions to insure against fire during construction and be responsible to ensure that the area within contract limits is kept orderly and clean and that combustible rubbish shall be stored on the site in such a manner and at such locations as designated by Owner to:

1. Provide and maintain adequate fire protection. The fire protection shall be adequate at all times, and shall be subject to applicable codes and regulations.
2. Comply with regulations, OSHA standards, and codes of local Fire Marshall, agencies, and departments having jurisdictions.

§ 10.2.11.1 The Contractor shall be required to keep fire alarm operational at all times or provide fire watch approved by Fire Marshal.

§ 10.2.11.2 The Contractor shall provide shielding for heat and keep smoke detectors from accidentally going off. Contractor will be back-charged for all fines imposed for fire alarms.

§ 10.2.11.3 The Contractor shall at all times provide the proper housekeeping to minimize potential fire hazards, and shall provide approved spark arresters on all steam engines, internal combustion engines and flues.

§ 10.2.11.4 No fires shall be built on the premises nor shall open flame devices of any kind be employed within the building except for field welding with supervised fire watch.

Neither Final Acceptance of the Work nor making any payment shall release the Contractor from the Contractor's obligations under this Article. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which the Contractor is responsible shall not be deemed to limit the effect of the provisions of this Article to or imply that the Contractor assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this Article nor the enumeration elsewhere in the Contract of particular risks assumed by the Contractor of particular claims for which the Contractor is responsible shall be deemed to limit the risks which the Contractor would assume or the claims for which the Contractor would be responsible in the absence of said enumerations.

§ 10.2.12 Free access to fire hydrants and standpipe connections shall be maintained at all times during construction operations, and portable fire extinguishers shall be provided by the Contractor and made conveniently available throughout the construction site. The Contractor shall notify its employees and subcontractors of the location of the nearest fire alarm box at all locations where the work is in progress.

The Contractor agrees that any unsatisfied claim of the Owner and/or Construction Manager arising from obligations in this Article 10 shall be set off or deducted from payments due the Contractor.

§ 10.2.13 No equipment, other than equipment with rubber tires, will be allowed on any existing or new pavement within the limits of the contract, UNLESS THE PAVEMENT HAS BEEN FIRST PROTECTED WITH PLANKING OR BY OTHER MEANS APPROVED BY THE CONSTRUCTION MANAGER.

§ 10.2.14 From the commencement to the completion of the Project, the Contractor shall keep the parts of the work and the buildings free from accumulation of water no matter what the source or cause of water.

§ 10.2.15 The Contractor shall be responsible for all costs incurred by the Owner caused by false security alarms set off by the Contractor. Costs shall include custodial response charges, Construction Manager's charges, etc.

§ 10.2.16 Temporary partitions are to be constructed where shown on drawings or where otherwise required for safety of the public or to prevent dust from entering occupied areas. Partitions shall be dustproof from floor to ceiling (if existing condition is a drop in tile ceiling, Contractor shall remove tile and install partition to structure above). In addition to framing and sheetrock partition to have plastic on the work area side. If an access door is required, an alternating 3 layer plastic system shall be used. The door shall be a standard hollow metal door with lockset and closer. Keys shall be distributed to the prime contractors, Owner and Construction Manager.

§ 10.2.17 During construction, the General Contractor shall be responsible for maintaining a watertight structure. This shall include additions and existing buildings. The Contractor shall be responsible for temporary roofing, tarps, and other protection at roofs, cavity walls, etc. Should the Contractor fail to provide adequate protection, causing flooding, damage, or other disturbance to the existing building, Contractor shall be responsible for all costs associated with clean up and repairs. Inasmuch as flooding and damage have safety implications to the general public, clean up and repairs may be made by the Owner without warning to the Contractor. Administration costs incurred by the Owner, Construction Manager and Architect will also be back charged to the Contractor. The Contractor, by entering into contract with the Owner agrees to be liable for these costs.

§ 10.2.18 The Contractor and their Subcontractors shall indemnify and hold harmless the Owner, Architect, Construction Manager and any of their employees from any and all claims, damages, losses, suits, obligations, fines, penalties, costs charges and expenses which may be imposed upon 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, for any above suits, obligations, charges and/or expenses imposed upon the Construction Manager for the act and/or omissions of any Contractor or Subcontractor that resulted in an incident and/or accident causing personal injury and/or property damage.

§ 10.3 Hazardous Materials

§ 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, Construction Manager and Architect of the condition.

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

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

~~**§ 10.3.3** [Deleted.]~~

§ 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 and indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2)

where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

~~§ 10.3.6 [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 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, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

§ 11.1.2.1 Contractor acknowledges that failure to obtain and maintain 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 shall provide the Owner with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities.

§ 11.1.2.2 The Contractor agrees to provide a copy of the insurance requirements to its insurance representative (such as, its insurance broker) prior to entering into the contract.

§ 11.1.2.3 The insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by law:

1. Workers Compensation:

- a. State: New York – Statutory
- b. Applicable Federal (e.g., Longshoreman's): Statutory
- c. Employer's Liability:
 - i. \$100,000/Per Accident
 - ii. \$500,000/Disease, Policy Limit
 - iii. \$100,000/Disease, Each Employee

2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad form Property Damage).

- a. Bodily Injury:
 - i. \$1,000,000/Each Occurrence
 - ii. \$2,000,000/Aggregate

- b. Property Damage:
i. Combined Single Limit – Each Occurrence/Aggregate
- c. Products and Completed Operations to be maintained for two years after final payment.

\$2,000,000//Aggregate

- d. Property Damage Liability Insurance shall provide X,C and U coverage.
- e. Broad Form Property Damage Coverage shall include Completed Operations.

3. Contractual Liability

- a. Bodily Injury
i. \$1,000,000/Each Occurrence
ii. \$2,000,000/Aggregate
- b. Property Damage
i. Combined Single Limit – Each Occurrence/Aggregate

4. Personal Injury, with Employment Exclusion deleted:

\$2,000,000/Aggregate

5. Business Auto Liability (including owned, non-owned and hired vehicles):

- a. Bodily Injury:
i. \$500,000/Each Person
ii. \$500,000/Each Occurrence
- b. Property Damage
\$500,000/Each Occurrence

6. If the General Liability coverage's are provided by a Commercial Liability Policy, the:

- a. General Aggregate shall be not less than \$2,000,000 and it shall apply, in total, to this project only.

7. Umbrella Excess Liability:

\$1,000,000 over primary insurance.

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

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

§ 11.2 Owner's Insurance

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

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and 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 directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) 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 Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, 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, Architect, and Construction Manager 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 Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, 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 Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their 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 Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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 Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

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

Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5. In the judgment of the Owner should any material, equipment or systems require corrective work because of defects in material or workmanship within the (2) two-year warranty period, or extended warranty periods, the Contractor shall complete all required corrective work within forty-five (45) days of notice. In the event the Contractor does not, in accordance with the terms and provisions of the Contract, complete all corrective work within forty-five (45) days, or comply with and fulfill his warranty obligations, the Owner will notify the bonding company to have such work and/or obligations performed at no additional cost to the Owner. The obligations of the Contractor under the terms and provisions of the Contract, shall not however be limited to the surety retained by the Owner pursuant to the provisions of the Contract.

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ The parties expressly agree that any claim, dispute, or other controversy of any nature arising out of the contract or performance of the Work shall be commenced and maintained in New York State Supreme Court located in Orange County. The Contractor and the Owner hereby waive any objections to venue, personal jurisdiction, or *forum non conveniens* of the Courts of the County of Orange, State of New York.

§ 13.1.2 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 Document unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the Agency responsible for the law enforcement.

§ 13.1.3 The Contractor shall at all times observe and comply with all Federal, State and local Laws, Statutes, Regulations, and Ordinances and all Policies and Regulations of the Owner or any other body having authority or jurisdiction over the Project, the Work or the location of the Project and all such orders decreed as exist at present and those which may be enacted later, by bodies or tribunals having jurisdiction or authority over the Work.

§ 13.1.4 Without limiting Section 13.1.2, the Contractor and each of its subcontractors shall comply with Prevailing Wage Rates as issued by the New York State Department of Labor for the location and duration of this Project and shall comply with all requirements governing its payments to its employees as set forth in Labor Law, section 220 et seq of the New York State Labor Law, as amended. Further without limiting Section 13.1.2., the Contractor and each of its Subcontractors affirmatively agrees to comply with Sections 220-d and 220-e of the New York State Labor Law.

§ 13.1.5 The Contractor shall comply with all of the provisions of the Immigration Reform and Control Act of 1986 and regulations promulgated pursuant thereto, as amended, 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 agents and employees from and against penalties, fees, costs, liabilities, suites, 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 in connection with the work performed hereunder.

§ 13.1.6 The Contractor shall comply with all of the provisions of the Immigration Reform and Control Act of 1986 and regulations promulgated

§ 13.1.7 The Contractor shall states that it has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the NYS Labor Law.

§ 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. The Contractor shall not assign any monies due or to become due to him under the Contract without the previous consent of the Owner.

§ 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 Except as expressly provided in the Contract Documents, 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 or in equity or by other agreement, and such rights and remedies shall survive acceptance of the Work and/or termination of the Contract Documents.

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures.~~ Unless otherwise provided, the Owner or a representative of the owner 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 Owner or representative of the Owner shall give the Contractor and Architect timely notice of when and where test and inspections are to be made so that the Contractor and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until

after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Construction Manager, 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 Construction Manager and 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 Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and 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 Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense. The Contractor agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services relating to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

§ 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 Construction Manager for transmittal to the Architect.

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

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

§ 13.5 Interest

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~

§ 13.4.7 Upon request the Contractor shall deliver test samples of any of the materials specified in these specifications to an independent testing agency. The Owner shall pay for the test of samples, which are found to conform to the specifications. The Contractor shall pay for the tests of samples, which do not conform to the specifications. This shall not relieve the Contractor of his obligations to perform specific tests described elsewhere in these specifications.

§ 13.4.8 Where the specifications require part of the work to be specially tested and approved, it shall not be tested or covered up without timely notice thereof or consent thereto. Should any part of the work be covered up without notice, approval or consent, such part of the work shall be uncovered for examination at the Contractor's expense if the Owner shall so require.

§ 13.4.9 Where operating tests are specified, the Contractor shall test the work as it progresses, on his own account, and shall make satisfactory preliminary tests in all cases before applying for official tests.

§ 13.4.10 Tests shall be made in the manner specified, for the different branches of the work. Each test shall be made on the entire system for which such test is required, wherever practical. In case it is necessary to test portions of the work independently, the Contractor shall do so.

§ 13.4.11 Should defects appear, they shall be corrected by the Contractor and the test repeated until the installation is acceptable.

§ 13.4.12 When notice of tests is to be given to the Architect, it shall also be given to the Owner's Representative.

§ 13.4.13 All paragraphs wherein the Architect is entitled to additional compensation from the Contractor shall be revised to reflect that the Owner's Representative is also so entitled.

§ 13.5 Interest [Deleted.]

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 Construction Manager has not certified or 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, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- ~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

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

~~.3 Line Omitted.~~

~~.4 Line Omitted.~~

§ 14.1.2 Paragraph Omitted.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seventy days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as including reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination, for such executed work which has not otherwise been compensated.

§ 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 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 seventy additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful and careful manner;
- .2 fails to make prompt 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 disregards the instructions of the Architect or the Owner, when such instructions are based on the requirements of the Contract Documents;
- .5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents.
- .6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all of the requirements of the Contract documents.

- .7 fails after commencement of the Work to proceed continuously with the construction and completion;
- .8 fails to keep the Project free from strikes, work stoppages, slowdowns, lockouts or other disruptive activity as required by Paragraph 3.4.3 hereof;
- .9 does not fully comply with the Contract Documents or otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; and take possession of materials stored off-site 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 and the Contractor will be back charged for costs incurred by the Owner.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and 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, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all reasonable attorney's fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect and consequential damages incurred by the Owner by reason of the termination of the Contractor as stated herein.

§ 14.2.5 It is recognized that: (1) if an order for relief is entered on behalf of the Contractor pursuant to Title 11 of the United States Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency and such event could impair or frustrate Contractor's performance of the Contract. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in subparagraphs 14.2.1 through 14.2.4 hereof. In all events, pending receipt of adequate assurance or performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back charged against the Contract Sum.

§ 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 the 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 this Contract.~~

§ 14.3.1 In addition to Owner's right to suspend, delay, or interrupt Contractor from any part of the Work pursuant to the Contract Documents, Owner may at any time, at will and without cause suspend, delay, or interrupt any part of the Work or any subcontract or all Work for any reason whatsoever for such period of time as the Owner may determine by giving three (3) day's prior written notice to Contractor, specifying the part of the Work or subcontract to be suspended, delayed, or interrupted, and the effective date of such suspension, delay, or interruption, as the case may be. Contractor shall continue to prosecute the part of the Work not suspended, delayed, or interrupted, and shall properly protect and secure the part of the Work so suspended, delayed, or interrupted, so far as is necessary in Owner's reasonable opinion. Notwithstanding Paragraph 8.3 hereof, if the Work or any subcontract is so suspended, delayed, or interrupted, Owner shall incur no liability to Contractor by reason of such suspension, delay, or interruption except that Contractor shall be entitled to payment of reasonable standby fees (or at Owner's option, payment for demobilization and subsequent remobilization) and of costs directly associated with protecting and securing the affected Work, provided said costs are authorized in advance by Construction Manager and Owner. No payments shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been suspended, delayed, or interrupted under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such suspension, delay or interruption, 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 Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

§ 14.3.2 [Deleted.]

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.1 In addition to Owner's right to remove Contractor from any part of the work pursuant to the Contract Documents, Owner may for the Owner's convenience at any time, at will and without cause, terminate any part of the Work or any subcontract or all remaining Work for any reason whatsoever by giving three (3) days' notice to Contractor, specifying the part of the Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated. If the Work or any subcontract is so terminated, Owner shall incur no liability to Contractor by reason of such termination except that Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract, provided said Work is authorized in advance by Construction Manager and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, 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 Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

Notwithstanding any other provision to the contrary in this Agreement, the Owner reserves the right at any time and in its absolute discretion to terminate the services of the Contractor and/or the Work by giving written notice to the Contractor. This termination for the convenience of the Owner provision allows and authorizes the Owner to terminate this Agreement at any time and for any reason whatsoever. This right may be exercised by the Owner in its complete discretion. Contractor's entitlement to payment for all such work shall be predicated on its performance of such work in accordance with the Contract Documents as certified by the Architect and Construction Manager. Contractor shall be entitled to no other payment and waives any claim for damages and/or lost profits.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately, in accordance with instruction from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

- .1 cease operations as directed by the Owner in the notice;
- .2 place no further orders and enter into no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract.
- .3 terminate all subcontracts and orders to the extent they relate to the Work terminated;
- .4 proceed to complete the performance of the Work not terminated;

- .5 take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .36 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 ~~In case of~~Upon such termination ~~for the Owner's convenience, the Owner shall pay,~~ the Contractor shall recover as its sole remedy payment for Work properly executed; costs incurred by reason of the performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement without limitation, anticipated profits.

§ 14.4.4 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.

§ 14.4.5 In the event the Owner commences legal proceedings against the Contractor, or same is commenced against the Owner by the Contractor, the Contractor shall be liable to the Owner for the expenses incurred by the Owner in connection with said proceedings. Said expenses shall include reasonable attorney's fees, costs, interest, penalties, and/or witness fees.

§ 14.4.6 Upon a determination by legal means (e.g. court action, etc.) that termination of contractor pursuant to Subparagraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to subparagraph 14.1.5 and Contractor's remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Subparagraph 14.1.5.

§ 14.4.7 Contractor agrees and acknowledges that payments for the work have been obtained through obligations or bonds which have been sold after public referendum. In the event the work is suspended or cancelled as a result of the order of any court, department entity or individual having jurisdiction, or in the event the work is suspended or cancelled due to the fact that a court, agency, department, entity or individual having jurisdiction has issued an order, the result of which is the aforesaid obligations or bond are no longer available for payment for the work. Contractor expressly agrees that it shall be solely entitled to pay for work accomplished until a notice of suspension or cancellation is served upon 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.

§ 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 its 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.

§ 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 Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

§ 15.1.4 Continuing Contract Performance

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

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

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

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. The Contractor shall accompany the Claim with a written analysis with a proposed revision to the Schedule illustrating the claimed influence of the basis for delay on the critical path of the Work and the applicable deadlines that may be impacted. Contractor will exercise reasonable efforts to mitigate the potential impact of any delay but shall be compensated for any costs associated therewith.

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

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

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

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

§ 15.2 Initial Decision

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

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, 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~~good faith negotiation and, ~~if the parties fail to resolve their dispute through mediation, to binding/or applicable~~ dispute resolution.

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

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

§ 15.2.76 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.

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

§ 15.3 Mediation

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

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

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose

~~presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

ARTICLE 16 ADDITIONAL CONDITIONS

§ 16.1 No Damages for Delay

§ 16.1.1 Notwithstanding any other terms or conditions set forth in the Contract Documents, 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.

§ 16.1.2 Contractor agrees and acknowledges that payments for the work 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 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 15.2.

§ 16.2 Prohibited Interests

§ 16.2.1 No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, approve of, or take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract, or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in the contract or in any part thereof.

§ 16.2.2 No officer, employee, architect, attorney, engineer, or inspector of the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory, or other similar functions in connection with the construction of the project shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this project.

§ 16.3 Performance and Specification Standards

§ 16.3.1 Applicable codes and standards for material furnished and work installed shall include all state laws, local ordinances, requirements of governmental agencies have jurisdiction, and applicable requirements of following codes and standards, including but not limited to:

1. New York State Uniform Fire Prevention and Building Code and amendments thereto.
2. New York State Energy Conservation Construction Code.
3. State Education Department Manual of Planning Standards.
4. New York State Department of Transportation, Office of Engineering, Standard Specification, Construction and Materials, dated January 2, 1990, and latest addendum thereto.
5. Life Safety Code – NFPA 101-91.

§ 16.3.2 Where specific performance requirements are listed herein, it is the intent of this specification that all manufacturers, fabricators, suppliers, installers, contractors, subcontractors, specialty and sub-subcontractors will provide services satisfying these requirements whether mentioned by trade or manufacturer's name or submitted for approval as a substitute.

§ 16.3.3 Wherever in the specifications reference is made to ANSI or ASTM Standards, Federal Specifications, Consumer Product Standards, or similar recognized standards, the latest edition of the respective publishing agency in effect at the date of "Bid Insurance" shall be accepted as establishing the technical requirements which shall be complied with, unless date of publication is recorded in this specification.

§ 16.3.4 Where no explicit quality or standards for materials or workmanship are established for work, such work shall be of quality consistent with industry standards and of the construction quality established for the Project generally.

§ 16.4 Blasting Operations

§ 16.4.1 Use of explosives on Site is not allowed.

§ 16.5 Welding

§ 16.5.1 Each Prime Contractor shall control the safe handling and storage of all welding materials, acetylene and oxygen tanks, and other equipment required for welding and cutting work at the job site.

§ 16.5.2 All welding materials and equipment shall be removed promptly from the premises upon completion of the welding and cutting work.

§ 16.5.3 Appropriate fire extinguishing equipment shall be provided where welding or cutting is to be performed. Sprinklers subject to fusing from heat due to welding or cutting shall be temporarily shielded, with valves to remain open. Contractors will be back charged for all fines imposed for false fire alarms.

§ 16.5.4 Welding or cutting shall not be performed in or near rooms or locations where flammable gases, liquids or vapors, lint, dust or loose combustible stocks are present unless suitably protected when sparks or hot metal from welding or cutting operations may cause ignition or explosion of such materials.

§ 16.5.5 Combustible construction or material shall be wetted down or protected by noncombustible shields or covers from possible sparks, hot metal or oxide.

§ 16.6 Ventilation During Construction

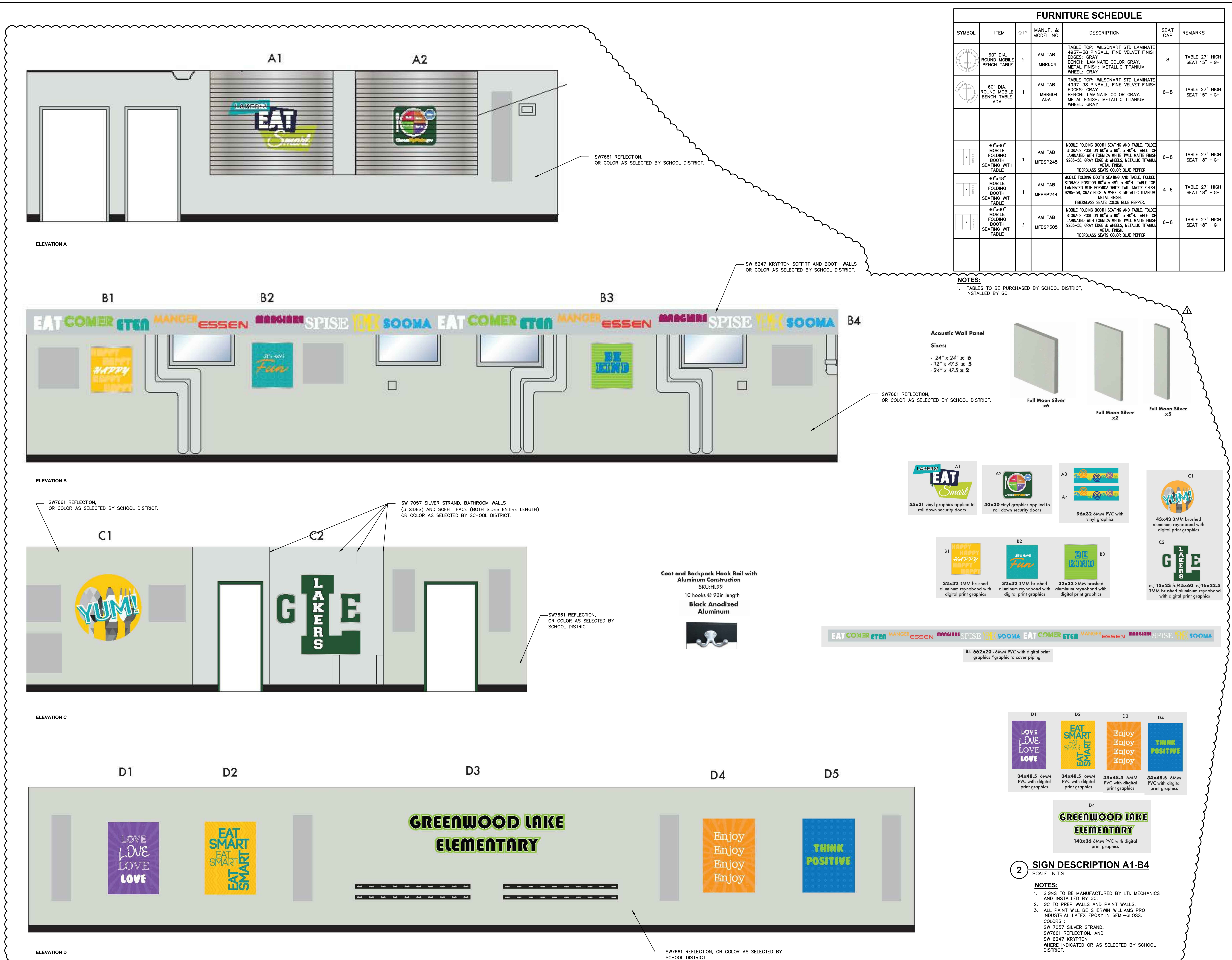
§ 16.6.1 The General Contractor shall provide ventilation of enclosed areas during construction as may be required to permit proper curing and drying out and to prevent excessive humidity moisture and condensation.

§ 16.6.2 Ventilation shall be by natural or artificial means as required by conditions involved.

§ 16.7 Broken Glass

§ 16.7.1 Each Prime Contractor shall be responsible for all broken, scratched, or damaged glass, which shall be replaced upon completion of the Work. Said Prime contractor shall reimburse the General Contractor for replacement costs of all such damaged glass upon completion of the Work.

§ 16.7.2 The responsibility shall terminate upon acceptance of the Work by the Owner, except as provided in the Specifications with respect to defective materials, workmanship, and guarantee/warranty provisions.



**GREENWOOD LAKE
UNION FREE
SCHOOL DISTRICT**

SED PROJECT NUMBER

44-21-11-02-0-002-015

CAPITAL IMPROVEMENTS

LEGEND

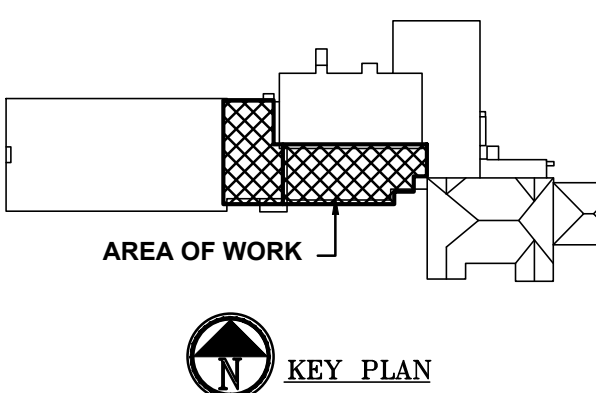
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UNAUTHORIZED ALTERATION OR ADDITION TO A
PLAN BEARING A LICENSED PROFESSIONAL
ENGINEER'S SEAL IS A VIOLATION OF SECTION
7209, SUB-DIVISION 2 OF THE N.Y. STATE
EDUCATION LAW.

Drawn by	SBL
Checked by	EDF
Project No.	FE# 19-194
Scale	AS NOTED
Date	1-8-21

**GREENWOOD LAKE
UNION FREE
SCHOOL DISTRICT**

GREENWOOD LAKE ELEMENTARY SCHOOL



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FE #: 19-194 www.fellp.com

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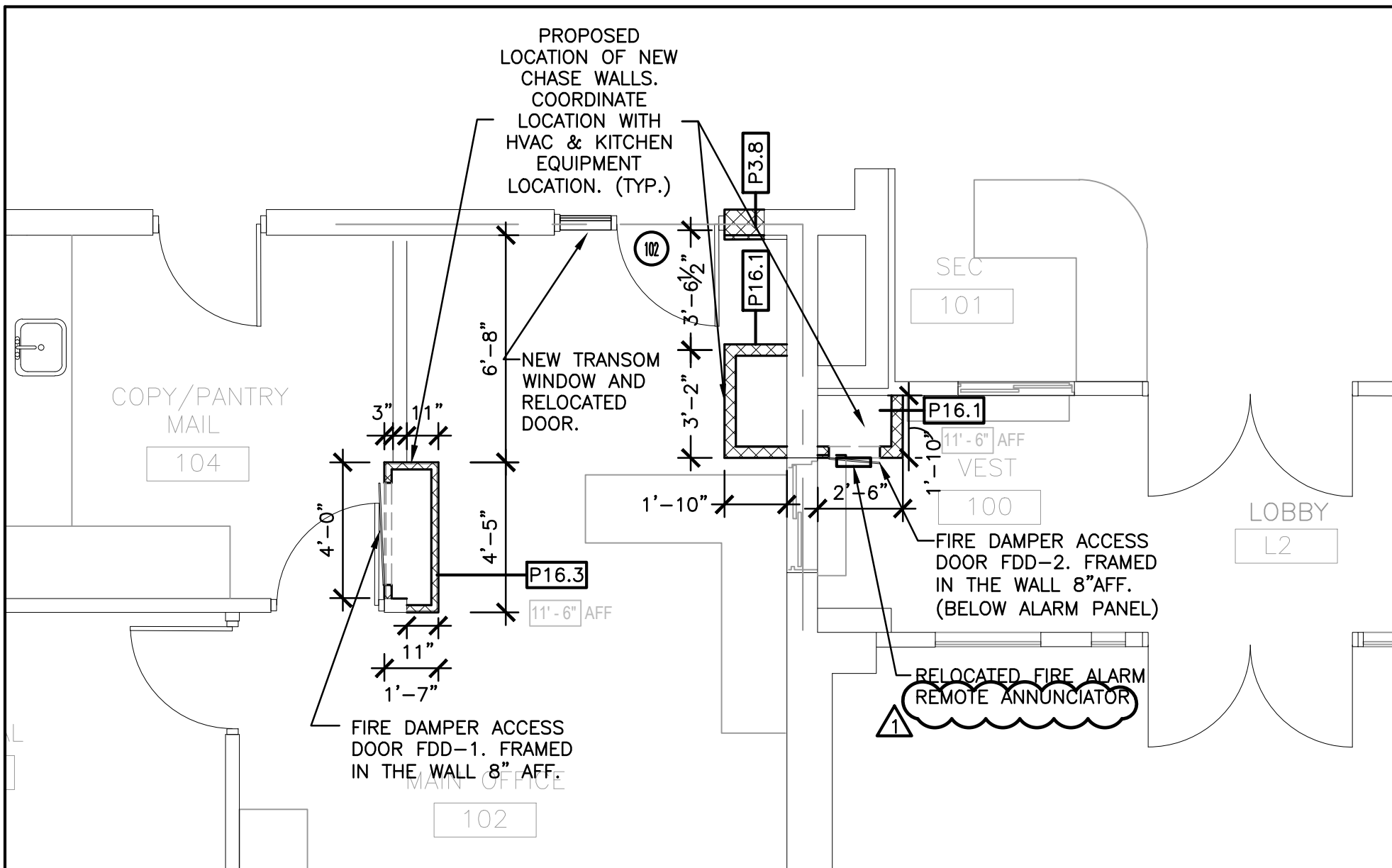
REFERENCE SCALE

Drawing Title

**ARCHITECTURAL,
CAFETERIA ELEVATIONS
AND SCHEDULE**

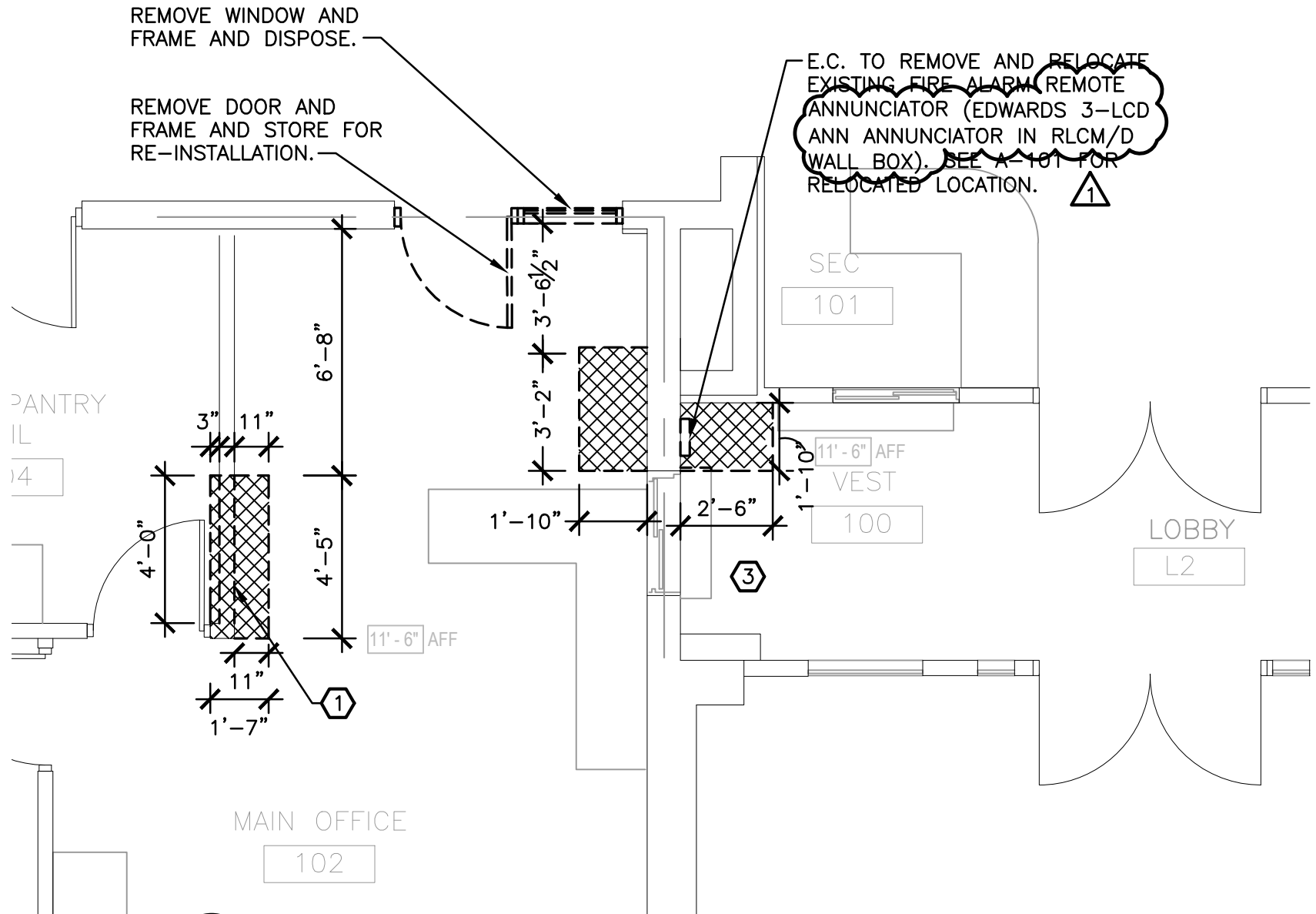
Drawing No.

A-401



1 **NEW PARTIAL FIRST FLOOR PLAN** SCALE: 1/4" = 1'-0"

FELLENZER III ENGINEERING LLP www.fellp.com 22 Mulberry St., Suite 2A, Middletown, NY 10940 t 845-343-1481 fx 855-320-8735 181 Church St., Suite 100, Poughkeepsie, NY 12601 t 845-454-9704; fx 855-320-8735	PROJECT TITLE: GREENWOOD LAKE UFSD CAPITAL IMPROVEMENT SED No: 44-21-11-02-0-002-015 FE PROJECT No: 19-194 SCALE: AS SHOWN REF. DWG.: A-101 DESIGNED BY: JDD DRAWN BY: SL CHECKED BY: EDF	SKETCH TITLE: ADDENDUM #1 FIRE ALARM CLARIFICATION REF. DWG. TITLE: ARCHITECTURAL: PARTIAL 1ST FLOOR & ROOF PLAN	SKETCH No: SK-A-101.1 ISSUE DATE: 1-18-22



1 EXISTING PARTIAL FIRST FLOOR PLAN SCALE: 1/4" = 1'-0"

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PROJECT TITLE: **GREENWOOD LAKE UFSD
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SED No: 44-21-11-02-0-002-015

FE PROJECT No:
19-194

DESIGNED BY:
JDD

SCALE:
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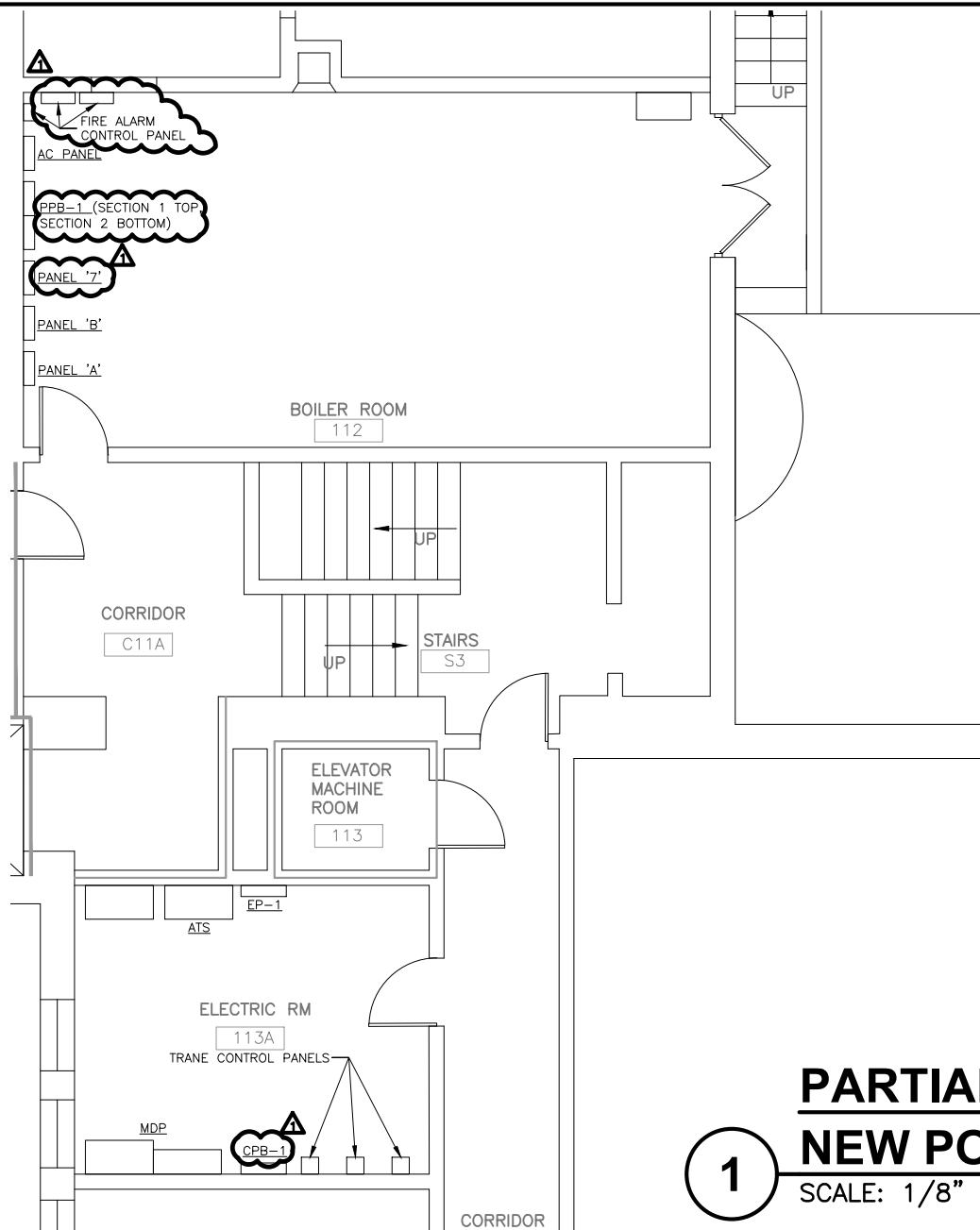
AD-101

SKETCH TITLE:
**ADDENDUM #1
FIRE ALARM CLARIFICATION**

REF. DWG. TITLE:
**ARCHITECTURAL: DEMO PARTIAL
1ST FLOOR & ROOF PLAN**

SKETCH No:
SK-AD-101.1

ISSUE DATE:
1-18-22



1

PARTIAL BASEMENT PLAN- NEW POWER PLAN

SCALE: 1/8" = 1'-0"

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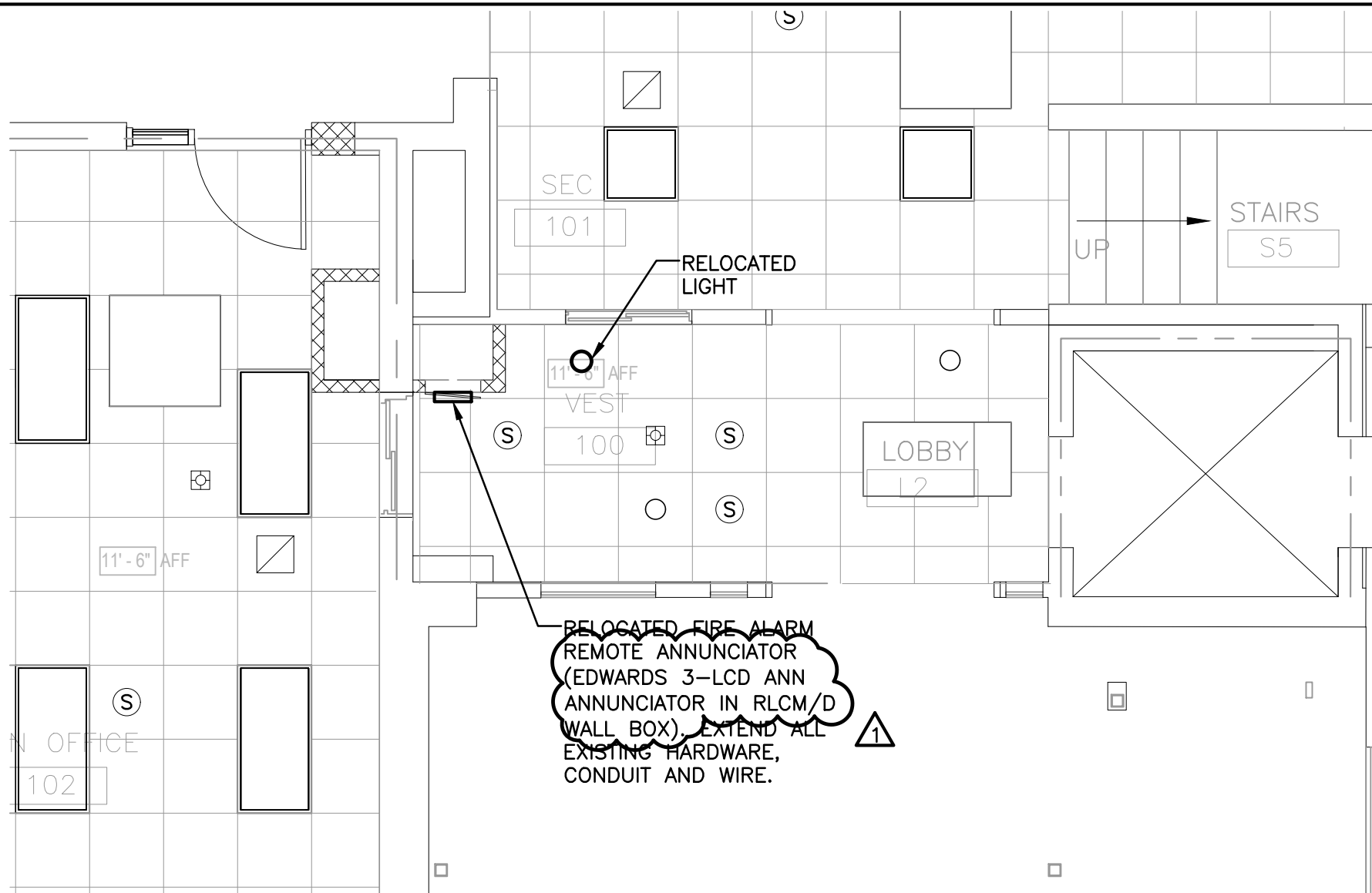
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SKETCH TITLE:
**ADDENDUM #1
ELECTRICAL PANEL CLARIFICATION**

REF. DWG. TITLE:
**ELECTRICAL: NEW PARTIAL BASEMENT
& ROOF POWER PLAN**

SKETCH No:
SK-E-100.1

ISSUE DATE:
1-18-22



2

NEW PARTIAL 1ST FLOOR - RCP

SCALE: 1/4" = 1'-0"

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SCALE:
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CHECKED BY:
EDF

REF. DWG.:

E-200

SKETCH TITLE:
**ADDENDUM #1
FIRE ALARM CLARIFICATION**

REF. DWG. TITLE:
**ELECTRICAL: NEW PARTIAL BASEMENT
& FIRST FLOOR LIGHTING PLAN**

SKETCH No:
SK-E-200.1

ISSUE DATE:
1-18-22

FIRE ALARM NOTES:

1. REFER TO THE FLOOR PLANS FOR LOCATION & QUANTITY OF FIRE ALARM DEVICES.
2. ALL FIRE ALARM WIRING SHALL BE IN TEFLON WIRE AND SHALL BE CONCEALED IN CEILING SPACES & WALLS. ALL NEW FIRE ALARM DEVICES SHALL BE CONNECTED TO THE EST3 FIRE ALARM CONTROL PANEL IN THE BASEMENT BOILER ROOM.
3. SYSTEM SCHEMATIC IS A DIAGRAMMATIC REPRESENTATION OF THE FIRE ALARM SYSTEM. THE SYSTEM SHALL BE INSTALLED AND WIRED AS PER THE SYSTEM MANUFACTURER'S RECOMMENDATION FOR A COMPLETE AND OPERABLE SYSTEM.
4. CONTRACTOR IS RESPONSIBLE FOR ALL FILING AND FINAL INSPECTION AS PER THE LOCAL AUTHORITY HAVING JURISDICTION.
5. CONTRACTOR TO PROVIDE AND INSTALL ALL NECESSARY MODULES, INTERFACE MODULES AND DEVICES REQUIRED TO PROVIDE AN OPERABLE ALARM SYSTEM IN COMPLIANCE WITH ALL CODES.
6. ACTIVATION OF THE SMOKE DETECTORS SHALL CAUSE A GENERAL ALARM AFTER THE SMOKE DETECTOR PERFORMS VERIFICATION.
7. ACTIVATION OF ANY PULL STATION OR HEAT DETECTOR SHALL IMMEDIATELY CAUSE THE ALARM PANEL TO ENTER THE ALARM MODE.
8. CONTRACTOR SHALL PROVIDE ALL NECESSARY ADDITIONAL RELAY DEVICES OR POWER TRANSFORMERS FOR PROPER OPERATION OF THE FAN SHUT-DOWN UNITS AND OTHER RELATED DEVICES.
9. BATTERY BACKUP SHALL PROVIDE A MINIMUM OF 24 HRS. OPERATION WITH A 15 MINUTE ALARM AT THE END OF 24 HRS.
10. NEW FIRE ALARM COMPONENTS SHALL BE TESTED IN ACCORDANCE WITH NFPA CODES 70, 70E, 72, BCNYS, FCNYS, LSC101 (2000)-CH.32 NEW BOARD AND CARE OCCUPANCY AS WELL AS ALL LOCAL AND STATE CODE REQUIREMENTS.
11. CONTRACTOR SHALL PROVIDE ALL ADDITIONAL APPURTENANCES AS REQUIRED FOR A COMPLETE AND OPERABLE SYSTEM. MODEL NUMBERS GIVEN MAY NOT INCLUDE ALL SPECIFIC REQUIRED ACCESSORIES FOR COMPLETE INSTALLATION.
12. PROVIDE APPURTENANCES NECESSARY SUCH THAT IF MORE THEN TWO STROBES ARE VISIBLE THEY SHALL FLASH IN SYNC.
13. ENTIRE FIRE DETECTION AND ALARM SYSTEM SHALL BE FURNISHED AND INSTALLED BY A N.Y. STATE LICENSED ALARM CONTRACTOR.
14. FIRE ALARM CONTRACTOR SHALL INTERCONNECT NEW SMOKE AND CO DETECTORS WITH THE EXISTING FIRE ALARM SYSTEM FOR PRIMARY POWER AND BATTERY BACKUP. CO ALARM SHALL ANNUNCIATE AS A SUPERVISORY CONDITION.
15. ALL AIR HANDLING SYSTEMS RATED 2,000 CFM OR MORE SHALL BE PROVIDED WITH DUCT SMOKE DETECTORS FAN SHUTDOWNS CONNECTED TO THE FIRE ALARM SYSTEM.
16. CONTRACTOR SHALL PROVIDE MAKEUP AIR UNIT SUPPLY FAN SHUTDOWN RELAY AND CONNECT IT AS AN OUTPUT ON THE EST3 FIRE ALARM CONTROL PANEL.
17. CONTRACTOR SHALL CONNECT ROLLING FIRE DOOR TO THE EXISTING EST3 FIRE ALARM CONTROL PANEL.
18. CONTRACTOR SHALL REMOVE, RELOCATE, AND RE-INSTALL THE EXISTING FIRE ALARM ~~REMOTE ANNUNCIATOR~~ AS SHOWN ON DRAWINGS AD-101, A-101 & E-200. EXTEND ALL EXISTING WIRING, CONDUIT, HARDWARE, ETC. AS NEEDED TO MAINTAIN CONTINUITY. PROVIDE ALL ADDITIONAL HARDWARE, CONDUIT AND WIRE REQUIRED FOR A COMPLETE INSTALLATION.

1

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19-194

SCALE:
AS SHOWN

DESIGNED BY:
JDD

DRAWN BY:
SL

CHECKED BY:
EDF

REF. DWG.:

E-701

SKETCH TITLE:
**ADDENDUM #1
FIRE ALARM CLARIFICATION**

REF. DWG. TITLE:
**ELECTRICAL:
DETAILS**

SKETCH No:
SK-E-701.1

ISSUE DATE:
1-18-22