



# 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)*

Alterations to MS/HS & New Varsity Baseball/Softball Dugouts/Storage  
Port Jervis City School District  
9 Thompson Street  
Port Jervis, New York 12771

**THE CONSTRUCTION MANAGER:**

*(Name, legal status, and address)*

Savin Engineers  
3 Campus Drive  
Pleasantville, New York 10570

**THE OWNER:**

*(Name, legal status, and address)*

Port Jervis City School District  
9 Thompson Street  
Port Jervis, New York 12771

**THE ARCHITECT:**

*(Name, legal status, and address)*

Bernier, Carr & Associates Engineers, Architects, and Land Surveyors, P.C.  
798 Cascadilla Street  
Suite C  
Ithaca, New York 14850

**ADDITIONS AND DELETIONS:**

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

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

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.

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT AND CONSTRUCTION MANAGER
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents include the Notice to Bidders, Information to Bidders, Form of Proposals, General Conditions, Specifications, Drawings, Addenda issued prior to execution of the Contract, Agreement between Owner and Contractor ("Agreement"), other Documents listed in the Agreement, and Modifications issued or negotiated after receipt of bids or execution of the Agreement, and when required by Governmental Agencies or Departments, appropriately inserted Certifications, Regulations, and Wage Rate Schedules.

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract or Agreement 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 as a representative of the Owner, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect, as a representative of the Owner, shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

Subcontractors shall assume the same obligations to the Contractors as the Contractor has to the Owner and the Architect under General Conditions AIA A232-2019 relationships and responsibilities of the Contractor to the Owner or Architect as defined in General Conditions AIA A232-2019 shall become those of the Subcontractor to the Contractor.

**§ 1.1.2.1** Where the term "Agreement", "Contract" or "Prime Contract" is used in the General Conditions, Supplementary General Conditions, and other Contract Documents, it shall mean the separate Owner-Contractor Agreement between the Owner and each individual Prime Contractor identified in Conditions of the Contract (General, Supplementary and other 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.

**§ 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, 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.

**§ 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, 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.

**§ 1.1.11 Miscellaneous Definitions:**

- .1 The term "Addendum/Addenda" shall mean Changes to the Contract Documents prior to the receipt of bids which are made part of the Agreement.
- .2 The term "Herein" shall mean the contents of the Contract Documents and/or the contents of the particular section where this term appears.
- .3 The term "Indicated" as used herein shall mean shown on the Drawings or described in the Contract Documents. Terms such as "Shown", "Noted", "Scheduled" and "Specified" have the same meaning as "As Indicated".
- .4 The term "Concealed" as used herein shall mean items hidden from sight in such locations as trenches, chases, shafts, furred spaces, walls, slabs, above ceilings and in crawl spaces or service tunnels.
- .5 The term "Exposed" as used herein shall mean not "concealed" as defined herein and the spaces behind normally closed doors such as interiors of cabinets.
- .6 The term "Product" as used herein shall include materials, systems and/or equipment.
- .7 The term "Furnish" as used herein shall mean furnish and deliver to the job site all products necessary that are connected with the Work including unloading, handling, transporting, unwrapping, and inspecting those products to be installed.
- .8 The term "Install" as used herein shall mean furnish all labor and perform all operations connected with assembly, erection, anchoring, installation of products or Work, curing, finishing, cleaning and similar operations including supplying all necessary tools, rigging and equipment to do the Work, and connect up, test, place in operation and service such products.
- .9 The term "Provide" as used herein shall mean furnish and install, without limitation, all labor, products, materials, equipment, transportation, services, etc., required to install, complete the Work, and/or to test and place in operation/service.
- .10 The term "Modifications" shall mean changes to the Contract Documents subsequent to the commencement of the work.
- .11 The term "Piping" as used herein shall mean pipe, rigid conduit, fittings, valves, hangers, and other accessories, which comprise a system.
- .12 The terms "proper", "satisfactory", "workmanlike" and words of similarly implied interpretation, judgment, or opinion, shall be understood to mean "in the opinion of the Architect".
- .13 As used herein, the terms "General Contractor", "GC" and "General Construction Contractor" have the same meaning.
- .14 As used herein, the terms "Mechanical Contractor" and "MC" shall mean the same thing.
- .15 As used herein, the terms "Plumbing Contractor" and "PC" shall mean the same thing.
- .16 As used herein, the terms "Electrical Contractor" and "EC" shall mean the same thing.
- .17 As used herein, the terms "Site Contractor" and "SC" shall mean the same thing.
- .18 As used herein, the terms "Roof Contractor" and "RC" shall mean the same thing.
- .19 As used herein, the terms "Asbestos Abatement Contractor" and "AAC" shall mean the same thing.
- .20 The term "project site" shall mean the space available to contractors at location of the project either exclusively or to be shared with other contractors for performance of Work.
- .21 The term "minimum requirements" shall mean indicated requirements are for a specific minimum acceptable level of quality/quantity, as recognized in the industry. Actual Work shall comply (within specified tolerances) or may exceed minimums within reasonable limits. Refer uncertainties to Architect before proceeding.
- .22 The term "basis of design" shall mean the material, product or manufacturer shown in the Contract Documents was selected to establish the minimum quality, performance and/or operation of the material or product.
- .23 The term "labeled" refers to classification by an approved Standards Agency.
- .24 As used herein, the term "Architect" shall also mean "Engineer" so duly licensed to "provide consulting services under a New York State License" and under Contract to provide professional services to the Owner."

- .25 The term "Warranty" shall mean a formal promise (guarantee) in writing that the contractor shall repair or replace a faulty product, material, or installation within the prescribed warranty period after Substantial Completion.
- .26 The term "General Conditions" shall mean the General Conditions of the Construction Contract, Construction Manager as Advisor Edition (AIA Document AIA A232-2019 Edition).

## § 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 intended 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.

§ 1.2.2 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.

§ 1.2.4 In the event of conflict or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 Contract (Agreement).
- .2 Modifications.
- .3 Addenda, with those of later date having precedence over those of earlier date.
- .4 Instructions to Bidders.
- .5 General Conditions of the Contract for Construction, Construction Manager as Advisor Edition.
- .6 Division 01 of the specifications.
- .7 Divisions 02 thru 49 of the specifications and drawings.
- .8 Other documents specifically enumerated in the Contract as part of the Contract Documents.

In the case of conflict or discrepancies between drawings and Divisions 02 thru 49 of the specifications or within or among the Contract Documents and not clarified by addendum, the Architect will determine which takes precedence.

§ 1.2.5 Scaling Drawings for dimensions, if done, is done at the Contractor's own risk. All dimensions shown on the Drawings are subject to verification of actual dimensions by the Contractor. It is the responsibility of the Contractor to verify all dimensions in the field to insure proper and accurate fit of materials and items to be installed. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify all existing conditions and measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any differences which may be found shall be submitted to the Construction Manager and Architect for resolution before proceeding with the Work."

§ 1.2.6 Where items are specified by the use of a reference standard not bound in the specifications, the date of the reference standard shall be the latest edition as outlined in the Building Codes of New York State and/or except as specifically indicated otherwise.

## § 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.

**§1.4.1** In the event of conflicts or discrepancies among the Contract Documents, interpretations will be as outlined under § 1.2.4.

**§ 1.4.2** In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall: (1) provide the better quality or greater quantity of Work, (2) comply with the more stringent requirement, or (3) either or both in accordance with the Architect's interpretation. The terms and conditions of this § 1.4.2, however, shall not relieve the Contractor of any of the obligations set forth in § 3.2 and § 3.7.

**§1.4.2.1** On the Drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small-scale drawings. Scaling Drawings for dimensions, if done, is done at the Contractor's own risk.

**§1.4.2.2** 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 will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference, which may be found, shall be submitted to the Architect for resolution before proceeding with the Work.

**§1.4.2.3** If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for review by the Architect before initiating the change.

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

**§ 1.4.4** The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts or omissions, which causes the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

**§ 1.4.5** In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Architect shall be the sole and final interpreter and will issue a written decision to the Owner and the Contractor within a reasonable time of written notification. The Architect's decision shall be conclusive and final.

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

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

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

## **§ 1.6 Notice**

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

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

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

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will 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.

## **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.

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

**§ 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.

*(Paragraph deleted)*

**§ 2.2.3** 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.

*(Paragraph deleted)*

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

**§ 2.3.1** The Owner shall make available for inspection, upon request, that field survey or testing information of existing conditions, which is known to be available, and which is held by the Owner at their offices. Such records are not Contract Documents and the Owner makes no representation as to their accuracy or completeness.

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

§ 2.3.3 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 reasonable 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 may furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner may 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 each Prime Contractor the following:

- .1 Copies for Construction: The Prime Contractors will each be furnished without charge up to two (2) sets of Contract Drawings, Project Manuals and Bid Addendums for use during construction for their own use and the use of their Subcontractors.
- .2 Owner shall furnish additional sets upon a Contractor's written request. Such additional sets will be provided at the cost of printing, postage and handling. Partial sets will NOT be provided.
- .3 Subcontractors and other entities desiring copies of Drawings and other contract Documents shall obtain them from the respective Prime Contractor.

§ 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.

§ 2.3.9 The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, the Contractors' means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws or regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

#### § 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 three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to 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 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

**§ 2.5.1** In the event Contractor fails, refuses or neglects to perform closeout obligations, including without limitation performance of incomplete items as attached to the Certificate of Substantial Completion, within forty-five (45) days following the date of Substantial Completion or time frame mutually agreed upon between Owner and Prime Contractor, the Owner may, without further notice (except to inform the Contractor its attempt to cure is inadequate) and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from Payments then or thereafter due to Contractor the cost of correcting such deficiencies. Contractor shall be liable to the Owner for any additional costs, including without limitation, those charged by Architect, Attorneys, or others attributable to such failure, refusal, or neglect.

### **§ 2.6 Owner's Rights for Use of Premises**

**§ 2.6.1** Whether Work of various Contractors is or is not partially or fully completed, the premises (site and buildings) are the property of the Owner who shall have certain rights and privileges in connection with use of same.

**§ 2.6.2** In such event, Contractor whose unfinished Work is performed subsequently shall be responsible for the prevention of any damage to such Owner's installation. Such use or occupancy by the Owner shall in no instance constitute acceptance of any of the Work.

## **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.

**§ 3.1.1.1** Where the words "Contractor", "Prime Contractor", or any reference to "each Contractor" occurs in the Contract Documents, they shall mean the person, firms or organization having a Contract for the Work as set forth in the Agreement.

**§ 3.1.1.2** The Contractor represents to the Owner that it possesses the skill, experience, and resources to perform the Work competently and diligently in an orderly and safe fashion and in accordance with the anticipated milestone and/or completion date(s) as applicable.

**§ 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.

**§ 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 Contractor shall promptly notify the Construction Manager and Architect, in writing, of any inconsistencies or errors to provide the Architect ample time for observation, investigation, detail drawings, etc.

§ 3.2.2.2 All Contractors submitting bid proposals shall be presumed to have examined the site to consider fully all conditions, which may have a bearing on the Work, and to have accounted for these conditions in their bid proposals.

§ 3.2.2.3 When required, off-site storage is the responsibility of the Contractor.

§ 3.2.2.4 The exactness of grades, elevations, dimensions, or locations indicated on the Drawings of Work installed by others is not guaranteed by the Construction Manager, Architect, or the Owner.

§ 3.2.2.5 Except as to any reported errors, inconsistencies and to concealed or unknown conditions referred to in § 3.7.4, by executing the Agreement, the Contractor represents the following:

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

§ 3.2.2.6 The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations indicated on the Drawings. Where the Work of this Contract connects or interfaces with existing or other Work, Contractor shall verify at the site all conditions of such existing or other Work. Any errors due to the Contractor's failure to verify such information shall be promptly remedied by the Contractor at no additional cost to the Owner.

§ 3.2.2.7 Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify all existing conditions and measurements. Any differences, which may be found, between actual measurements and dimensions indicated on the Drawings shall be submitted to the Architect for resolution before proceeding with the Work. No extra compensation will be allowed for such discrepancies.

§ 3.2.3 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.

*(Paragraph deleted)*

### § 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 Laying out the work:**

- .1 Each Contractor shall carefully lay out its Work in accordance with the Contract Documents and shall coordinate its Work with existing and new Work and it shall verify all lines and levels indicated in the Contract Documents that affect its Work.
- .2 Adjustments required to suit field conditions shall be made only after the Construction Manager's and Architect's review. Each Contractor shall be responsible for the accuracy of layout and shall correct at its own expense any Work that his forces have laid out incorrectly.
- .3 Where equipment lines or piping and/or conduit are shown diagrammatically, the Contractor shall be responsible for the coordination and orderly arrangement of the various lines of piping and conduit included in the Work of its Contract. Contractor shall coordinate its work and prevent all interferences between equipment, lines of piping, architectural features, and avoid any unsightly arrangements in the exposed areas.

**§ 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 Shutdowns:** Such Work as connections to existing sewers, plumbing, heating, and electric systems, shall be done at a time agreeable to the Owner and Construction Manager and shall be determined and agreed to well in advance of the actual doing of such Work so as to interfere as little as possible with the operation and use of existing facilities. Shutdowns must be coordinated through the Construction Manager 48 hours prior to shut down. The continued uninterrupted operation of all facilities is essential. If any existing facilities must be interrupted, the Contractor for the Work shall provide all necessary temporary facilities and connections necessary for maintaining existing facilities. No mechanical, heating, plumbing, sprinkler, or electric services shall be interrupted at any time, except as approved in advance by the Owner. All communication systems must be maintained without interruption. As much related work as possible shall be performed prior to shut-downs, so as to minimize the period of shut-down. All material and manpower to do the work involved shall be at the job prior to interruption of services.

**§ 3.3.5** If the Work involves a School facility, the Contractor represents that it is familiar with and shall adhere to the "Uniform Standards for School Construction and Maintenance Projects" set forth at 8 New York Code of Rules and Regulations §155.5 (8 NYCRR 155).

**§ 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.

**§ 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.

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

**§ 3.4.4 Equivalent Products:** Except as otherwise specified, whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturer's or vendors' names, catalog numbers, or the like, it is so identified for the purpose of establishing a standard, and any material, article, or piece of equipment of other manufacturers or vendors which will perform adequately the duties imposed by the general design may be considered equally acceptable provided the material, article, or piece of equipment so proposed is, in the opinion of the Architect, of equal substance, appearance, size, function and performance. Such proposed product shall not be purchased or installed until approved by the Architect.

- .1 The Owner and the Architect will consider a formal request for the substitution of a product in place of the one specified only under the conditions set forth in the General Requirements (Contract, & General Conditions) on "EQUIVALENCY", of the Specifications) for each proposed substitution.
- .2 The Architect will be allowed ten (10) business days to evaluate each proposed substitution. The Architect will be the sole judge of equivalence, and no substitution shall be ordered, installed or utilized without the Architect's review process having been completed and the product accepted by written notification.
- .3 Owner may require Contractor to furnish at the Contractor's expense a special performance warranty or other surety with respect to any substitution.
- .4 The Architect will record time required by the Architect and the Architect's consultants in evaluating substitutions proposed by the Contractor and in making changes in the Contract Documents occasioned thereby. Whether or not the Architect accepts a proposed substitution, Contractor shall reimburse the Owner for the charges of the Architect and the Architect's Consultants for evaluating each proposed substitution. In the event Owner is not obligated to pay Architect for such costs incurred by the Architect in evaluating proposed Substitutions as Additional Services. Contractor shall pay Architect's additional cost for such evaluation directly to Architect as a third-party beneficiary under this Contract.
- .5 Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.
- .6 Reasons the substitution is advantageous and/or necessary, including the benefits to the Owner and Work in the event substitution is acceptable.
- .7 The adjustment, if any, in the Contract Sum in the event the substitution is acceptable.
- .8 The adjustment, if any, in the time of completion of the contract and the construction schedule in the event the submission is acceptable.
- .9 Contractor shall demonstrate that the proposed substitution conforms and meets all the requirements of the pertinent Specifications and the Drawings; and the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted to the Architect. Architect will review and make an informed decisions on proposed substitution within ten (10) business days.
- .10 Substitutions and alternates may be rejected with or without written explanation.
- .11 No substitute material shall be purchased or installed by the Contractor without the Architect's written approval. Material that, in the Architect's opinion, is inferior to that specified or is unsuited for the intended use will be rejected. The Architect's decision regarding acceptance of equals shall be final. The risk of whether a proposed substitution will be accepted is borne by the Contractor. No requests for substitution will be considered unless the Architect determines that such substitution is in the best interest of the Owner under the conditions set forth in the Contract Documents.
- .12 By making requests for substitutions the Contractor:
  - a. Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
  - b. Represents that the Contractor will provide the same warranty for the substitution that the Contractor would provide for the specified product;
  - c. Certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;
  - d. Will coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete in all respects; and,
  - e. Will reimburse Owner for additional costs from claims by other Prime Contractors resulting from incorporation of the requested substitution.

- .13 If the Project involves Public Work subject to N.Y. General Municipal Law §103, whenever a material, article, device, piece of equipment or type of construction is identified on the Drawings or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, or similar specific information, it is so identified for the purpose of establishing a standard of quality, and such identification shall not be construed as limiting competition. In such event, any material, article, device, piece of equipment or type of construction of other manufacturers or vendors that will perform the duties imposed by the general design will be considered equally acceptable provided the material, article, device, piece of equipment or type of construction so proposed is completely described in submittals as set forth herein and is, in the opinion of the Architect, of equal substance, appearance, and function.
- .14 The burden of proof to show equivalency or equal quality shall be that of the Contractor. Submissions for this purpose shall follow the format for Submittals. Submissions shall be complete, informative & address all data required in the base bid specification in such a manner that the Architect can, without unusual effort or exhaustive research, review and make a judgment as to its equivalency. Excessive or unusual effort required of the Architect by the Contractor to review, research and qualify items proposed as equivalents shall be charged to the Contractor at the current billing rate of the Architect.
- .15 Proposed equivalents or substitutions will not be considered unless requested as set forth herein. Mere express or implied indication of equivalents or substitutions will not be considered without full compliance these requirements.
- .16 The Contractor shall indicate the kind, type, brand or manufacturer that is to be substituted for the specified item. The Contractor will submit information describing in specific detail the differences in quality, performance, cost and time between the substitution and the item that was specified. This information shall include notification of possible changes to the Work or to work of other contracts."

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

§ 3.4.6 Contractor shall be responsible for the care and protection of all equipment and materials for his work of this project, including equipment and material furnished by the Owner.

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

### § 3.5 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 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.

§ 3.5.1.1 Neither final payment, nor provision in Contract Documents, nor partial or entire occupancy of premises by Owner shall constitute an acceptance of Work not done in accordance with Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship.

§ 3.5.1.2 In emergencies occurring during the warantee period, the Owner may correct any defect immediately and charge the cost to the Contractor. The Owner shall at once notify the Contactor, who may take over the Work and make any corrections remaining after his forces arrive at the Work. Any repair work not started within seven (7) days following notice to the Contractor of any defect shall be considered an emergency.

§ 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.

### § 3.6 Taxes

Except as otherwise specified, the Contractor shall pay 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.

§ 3.6.1 The OWNER is exempt from the payment of Sales and Compensating Use Taxes of the State of New York and of cities and counties, on all materials, equipment and supplies to be sold to the OWNER pursuant to this Contract. The exemption does not, however, apply to tools, machinery, equipment, or other property leased by or to the contractor or to a Sub-Contractor and the Contractor and its Sub-Contractor. Also exempt from such taxes are purchases by the CONTRACTOR and its subcontractors of materials, equipment and supplies to be sold to the OWNER pursuant to its Contract, including tangible personal property to be incorporated in any structure, building or other real property forming part of the Project." The exemption does not, however, apply to tools, machinery, equipment, or other property leased by or to the CONTRACTOR or a Sub-Contractor and the CONTRACTOR and its Sub-Contractor shall be responsible for any pay, any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property, and for materials not incorporated into the project.

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

§ 3.7.1 Each Contractor shall secure and pay for all required permits, governmental fees, licenses, certificates of inspection, of occupancy, of Underwriters, and of all other required certificates for the Work, necessary for the proper execution and completion of the Work, which are customarily secured after execution of the Contract and which are legally required at the time the bids are received. Each Contractor shall be responsible for complying with any and all requirements specified with each Permit.

§ 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.

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed or affected work is performed and in no event later than 7 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 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.
- .4 Value of allowances shall also include:
  - All costs for plant, equipment and labor for unloading, handling and storage at the site;
  - Any costs for protection;
  - All costs for associated demolition work;
  - Costs for removal and off-site disposal of demolished materials;
  - Cost for labor, materials and equipment for installation and finishing, except where labor is specified not to be a part of the allowance.
  - Other expenses required to complete the installation.

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

### § 3.9 Superintendent

§ 3.9.1 Prior to starting the work, the Contractor shall designate the 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 not reduce or terminate supervision of the Work.

§ 3.9.5 If, for any reason, the Contractor takes an action resulting in any of the changes noted in § 3.9, which negatively affects the project's progress or quality, or resulting in additional work by the Owner or their agents, the Owner has the right to charge the Contractor all costs associated with these efforts including the costs of legal, Construction Management Services, and Architectural services. The Owner shall notify the Contractor in writing of their intent to back charge as a result of lack of supervision.

§ 3.9.6 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.

§ 3.9.7 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.

§ 3.9.8 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.

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

§ 3.9.10 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.

§ 3.9.11 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, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule 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**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the 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.

### **§ 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.

**§ 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 No extension of time will be granted to the Contractor because of failure to have shop drawings, product data, and samples submitted in ample time to allow for review by the Construction Manager, Architect or their Consultants.

§ 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 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.

**§ 3.12.10.2.1** If it is the position of the Contractor, or his licensed design professional, that the Owner and Architect have not provided all performance and design criteria, the Contractor shall request additional criteria in writing before proceeding with the professional services described in § 3.12.10. Proceeding with the professional services shall be evidence that the Owner and Architect have provided all necessary performance and design criteria.

**§ 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** Use of site and building:

- .1** Each Prime Contractor shall cooperate with the Owner in making available for the Owner's use, areas of the completed or partially completed building(s) or site as provided for in Article 9, Paragraph 9.9.

- The Owner shall have the right to take possession of and to use any completed or partially completed portions of the building or site even though the time of completing the entire Work or such portion of the Work may not have expired. Such use shall not constitute acceptance thereof. Such occupancy shall in no way abrogate any specified warranties or guaranties for materials, workmanship or operation of equipment pertaining to the occupied portions.
- .2 Each Prime Contractor shall cooperate with the Owner in making available for the Owner's use such building services as heating, ventilating, cooling, water, lighting and telephone for the space or spaces to be occupied, and if the equipment required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid space or spaces, the Contractor shall make every reasonable effort to complete such part of his Work as soon as possible to the extent that the necessary equipment can be put into operation and use.
  - .3 Mutually acceptable arrangements shall be made as to the warranties or guaranties affecting all Work associated therewith.
  - .4 Such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. (See 11.3.1.5) Such occupancy shall be documented with an appropriately executed Certificate of Substantial Completion.
  - .5 See Article 2, Paragraph 2.5 for special situations.

**§ 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.

### § 3.13.3 Protection of Building Occupants

§ 3.13.3.1 Owner or Tenant occupied areas of the building shall always comply with the minimum requirements necessary to maintain a Certificate of Occupancy.

§ 3.13.3.2 General safety and security standards for this project include:

- .1 All construction materials shall be stored in a safe and secure manner;
- .2 Fences shall be maintained around construction supplies or debris.
- .3 Gates in temporary fences shall always be locked unless a worker is in attendance to prevent unauthorized entry to the Contract areas.

- .4 During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.
- .5 Workers shall wear photo-identification badges at all times for identification and security purposes.
- .6 Separation of Construction Areas: Construction areas that are under the control of a Contractor and therefore not occupied by Owner or Tenants shall be separated from occupied areas. Provisions shall be made to prevent the passage of dust and contaminants into occupied parts of the building. Periodic inspection and repairs of the contaminant barriers must be made to prevent exposure to dust or contaminants. Each Contractor working inside the buildings shall temporarily seal doorways enclosing their work area, using heavy duty plastic, duct tape, etc. Repairs of the plastic and tape must be made in the event the tape becomes loose or the plastic is cut or torn.
- .7 Type "X" Gypsum Board shall be used in exit ways or other areas that require fire rated separation.
- .8 Plastic sheeting may be used only as a vapor, fine dust, or air infiltration barrier, and shall not be used to separate occupied spaces from construction areas.
- .9 A specific stairwell and/or elevator should be assigned for construction worker use during work hours. In general, workers may not use corridors, stairs, or elevators designated for Owner or Tenants.
- .10 Large amounts of debris must be removed by using enclosed chutes or a similar sealed system. There shall be no movement of debris through halls of occupied spaces of the building. No material shall be dropped or thrown outside the walls of the building.
- .11 All parts of the building affected by renovation activity shall be cleaned at the close of each workday, including but not limited to cleaning and disinfection in connection with infectious disease exposure precautions, whether permanent or temporary, required or suggested by federal, state or local governmental authorities.
- .12 Fire and hazard prevention: Areas of buildings under construction that are to remain occupied shall maintain a Certificate of Occupancy.

**§ 3.13.3.3 Noise Abatement During Construction:**

- .1 Construction and maintenance operations shall not produce noise in excess of 60 dba in occupied spaces or shall be scheduled for times when the building is not occupied, or acoustical abatement measures shall be taken.

**§ 3.13.3.4 Control of airborne contaminants during construction:**

- .1 The Contractor shall be responsible for the control of the chemical fumes, gases, and other contaminants produced by their welding, gasoline or diesel engines, roofing, paving, painting, etc. to ensure they do not enter occupied portions of the building or air intakes.
- .2 The Contractor shall be responsible to ensure that its activities and materials which result in off-gassing of volatile organic compounds such as glues, paints, furniture, carpeting, wall covering, drapery, etc. are scheduled, cured, or ventilated in accordance with manufacturer's recommendations before a space can be occupied.
- .3 Large and small asbestos abatement projects as defined by 12NYCRR56 shall not be performed in occupied areas of the building. Any area of the building where abatement of hazardous materials is being performed must be sealed off in an air-tight fashion from the remainder of the building in accordance with NY Code Rule 56 and other applicable laws and regulations.
- .4 The requirements of Section 155 of the Regulations of the New York State Commissioner of Education apply to this Project. Reference Section 01 3529.1 Life Safety Requirements During School Construction and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 8 Education Department, Chapter II Regulations of the Commissioner, Subchapter J. Buildings and Transportation Part 155 Education Facilities.

**§ 3.13.4** Each Contractor shall be responsible for complying with Occupational Safety and Health Administration (OSHA) and U.S. Department of Health and Human Services' Center for Disease Control and Prevention (CDC) on COVID-19 Guidance for safe work practices, use of personal protective equipment (PPE), social distancing, cleaning, and sanitizing of the worksite. These protocols shall be incorporated into each Contractor's safety work plan.

**§ 3.13.5** All construction workers and suppliers are to execute a Health Declaration Form/Questionnaire each day prior to gaining access to one of the construction sites during the COVID-19 crisis.

### § 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 In order to eliminate cutting and patching as much as possible, each Prime Contractor shall coordinate the installation of sleeves and inserts with the other Prime Contractors affected and shall give proper and detailed instructions to others where Work may be affected by their Work, with adequate notice prior to the erection of new Work. Cutting and patching Work as required to install new Work or remove existing Work shall be done carefully and neatly with as little damage as possible.

§ 3.14.3 Unless otherwise stated in Specification Section 01 7329 Cutting and Patching, each Prime Contractor shall perform all cutting and patching as required to complete their Work. Cutting is to be done neatly with minimal damage to surrounding materials and holes to be patched and/or fire safe as required to the satisfaction of the Construction Manager, Architect and Owner.

§ 3.14.4 Any costs caused by defective or ill-timed Work shall be borne by the Contractor responsible, therefore. Any Contractor who is required to cut and patch its new Work to provide conditions for other contractors to complete their new Work and who was not given adequate prior notice of the conditions required for completion of such Work before doing its Work, shall charge the Contractor in default the documented cost of the cutting and patching Work plus 15% for overhead and profit unless otherwise specified.

§ 3.14.5 Cutting and patching of any Work shall be made in such a manner as to not breach any provisions of any guarantee or warranty on existing Work left in place or guarantee or warranty required for his new Work. Patching of Work shall match existing adjacent surfaces and patch work shall be disguised completely to hide any trace of patching.

§ 3.14.6 Refer to Contract (General, Supplementary and other conditions) Section 01 7329 Cutting and Patching for more information.

### § 3.15 Cleaning Up

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

§ 3.15.1.1 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** Each Prime Contractor is solely responsible for clean-up to the Construction Manager's and Owner's satisfaction. Further, each Contractor shall fully cooperate with all other Contractors in the coordinated effort to meet the Owner's time and quality requirements for clean-up.

#### **§ 3.15.4 Final Cleaning**

- A. General: General cleaning during construction is required by the General Conditions and included in Division 01.
- 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 defend, indemnify and hold harmless the Owner, Architect, and the Construction Manager, and each of their consultant's, officers, board members, agents, and employees, from and against any suits, claims, damages, losses, or expenses, including but not limited to attorneys' fees and litigation costs, arising out of or resulting from performance of the Work, including suits, claims, damages, losses or expenses attributable to any bodily injury, sickness, disease, or death, or injury to or destruction of any tangible property, including loss of use resulting therefrom, or any statutory violations, but only to the extent caused in whole or in part by the act, omission, fault, or statutory violation of the Contractor, a subcontractor, or any person or entity directly or indirectly employed by them, or any person or entity for whose acts they may be liable 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. This provision shall not be construed to require the Contractor to indemnify the Owner, Architect or Construction Manager for the negligence of the Owner, Architect or Construction Manager, respectively, to the extent such negligence, in whole or in part, proximately caused the damages resulting in the suit, claim, damage, loss or expense.

**§ 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** In any and all Claims against the Owner, Construction Manager, or the Architect or their agents or employees by third parties, the indemnification obligation under § 3.18 shall apply and shall not be limited by limitation or amount of or type of damages, compensation, or benefits payable by or for the Contractor or Subcontractors.

**§ 3.18.4** Contractor shall comply with, and cooperate with, Construction Manager, Architect and Owner in complying with legal requirements. Among other things, Contractor shall be responsible for performing corrective Work within any abatement periods prescribed by governmental entities including but not limited to OSHA, appealing from decisions or orders, requesting extensions on abatement periods, and furnishing such information or evidentiary material as may be necessary or as may be requested by Construction Manager, Architect or Owner to fully protect the rights and interests of Owner, Construction Manager, and Architect with respect to possible, threatened or pending proceedings or orders.

**§ 3.19 Contractor's Responsibilities**

**§ 3.19** Contractor agrees, in addition to all other responsibilities and duties under the Contract:

**§ 3.19.1** To use all necessary means to discover and to notify the Construction Manager, Architect and Owner in writing of any defect in other Work upon which the satisfactory performance of the Work may depend, and to allow a reasonable amount of time for remedying such defects. If Contractor should proceed with the Work, Contractor shall be considered to have accepted and be responsible for such other Work unless over Contractor's written objection, Contractor shall have proceeded pursuant to written instructions from the Architect.

**§ 3.19.2** To submit to Owner, Construction Manager, and Architect promptly upon request, information with respect to the names, responsibilities and titles of the principal members of Contractor's staff.

**§ 3.19.3** To take all steps necessary to avoid labor disputes; and to be responsible for any delays and damages to Owner caused by such disputes.

**§ 3.19.4** To pay for costs of repair to other Work attributable, in whole or in part, to the fault or negligence of Contractor and Owner's charges for removal of rubbish attributed to Contractor, and any clean-up related to Contractor or the Work, as determined by Owner or Construction Manager.

**§ 3.19.5** To comply with all legal requirements; to appear at hearings, proceedings or in court in respect of such compliance or in respect of violations or claimed violations of legal requirements; to pay any fines or penalties imposed for said violations; and to pay all legal fees, fines and penalties incurred by or imposed upon Owner relating to Contractor's compliance, violations or claimed violations. Without limiting the foregoing, Contractor shall appear at hearings, proceedings and/or in court and consent to its substitution as a party defendant in respect of all summonses and claimed violations arising out of or relating to the Work.

**§ 3.19.6** Not to display on or about the Project site any sign, trademark or other advertisement without written consent of the Owner.

**§ 3.19.7** Each Contractor's Subcontractor and supplier shall be bound by all Contract Documents to the same extent and with the same effect as if the Subcontractor or supplier were the Contractor. Contractor shall cause Subcontractors and suppliers to comply with all the Contract Documents. Contractor shall be responsible for all the acts, work, material and equipment of its Subcontractors and supplier and all persons either directly or indirectly employed by any of them.

**§ 3.19.8** To:

- .1 Furnish a competent and adequate staff and use its best skill and attention for the proper administration, coordination, supervision, and superintendence of the Work;
- .2 Organize the procurement of all materials and equipment so that they will be available at the time needed for the Work;
- .3 Keep an adequate force of skilled workers on the job to complete the Work in strict accordance with all requirements of the Contract Documents;

- .4 Maintain throughout the duration of the Work a competent superintendent and any necessary assistants, all of whom shall be acceptable to Owner and shall not be changed without the consent of the Owner;
- .5 Enforce discipline and order and not to employ at the Project any unfit person or anyone not skilled in the task assigned; and
- .6 Provide supervision by experts in all aspects of the application of the materials, equipment or system being fabricated and installed.

**§ 3.19.9** That if any Work is performed which is contrary to legal requirements, to promptly make all changes as required and take all other corrective action to comply therewith and pay all costs arising there from.

**§ 3.19.10** That any review or consideration by Owner, Construction Manager, or Architect of any method of construction, invention, appliance, process, article, device or material of any kind shall be for its general adequacy for the Work and shall not be an approval for the use thereof by Contractor in violation of any patent or other rights of any third person. Owner and Architect shall in no event be deemed to have reviewed or to have been required to review or consider the means and methods of construction, all of which are chosen exclusively by the Contractor.

**§ 3.19.11** That if any provision of the Contract Documents conflicts with any agreement among members of trade associations, or with a union or labor council which regulates the work to be performed by a particular trade, to reconcile such conflict without delay or damage to Owner. In the event the progress of the Work is delayed by such conflict, Architect may require that other material or equipment of equal or better kind and quality be provided at no additional cost to Owner. This right of substitution shall not limit other rights that the Owner may have concerning such delay.

**§ 3.19.12** In accordance with local or NY State Laws and Regulations, the Contractor, including any of its employees, subcontractors, suppliers or materialmen or other representatives, shall not use tobacco in any form on the premises during the course of the Work. Contractors failing to abide by this requirement shall be prohibited from working at the site and shall be responsible for any consequent delays or added costs to the Owner as a result of such noncompliance.

**§ 3.19.13** The Contractor shall provide reasonable and visible identification for each employee, Subcontractor, or other person at the Project site, and shall, upon request of the Owner, make available a list of names of those employees, Subcontractors or others working under the direction of the Contractor at the Project site. Any such identification shall be reasonably visible to the Construction Manager, Architect and to Owner's or Tenants' personnel at all times to allow the Owner to maintain the safety and security of buildings, property, and persons at the Project site. Contractors failing to abide by this requirement are different from those as indicated.

**§ 3.19.14** The Contractor, its employees and Subcontractors and their employees shall be subject to and abide by rules and regulations established by the Owner. No weapons of any kind shall be permitted on-site; there shall be no harassment of a sexual, ethnic, or religious nature; there shall be no use of profanity.

### **§ 3.20 Local Conditions, Existing Features and Underground Data**

**§ 3.20.1** The Contractor acknowledges it has satisfied itself as to the nature and location of the Work, the general and local conditions, particularly those bearing on transportation, disposal, handling and storage of materials, availability of labor, materials, equipment, utilities, roads, weather, ground water table, character of surface and subsurface materials and conditions, the facilities needed to prosecute the Work, and all other factors which in any way affect the Work or the cost thereof under this Contract. Any failure by the Contractor to acquaint itself with the available information concerning these conditions will not relieve it from the responsibility of successfully performing work. See Section § 1.2.2.1.

**§ 3.20.2** The location of existing features shown on plans is intended for general information only. The Contractor is solely responsible for accurate determination of the location of all structures and shall not be entitled to any extra payment due to any unforeseen difficulties or distances encountered in the Work.

**§ 3.20.3** The locations, depths, and data as to underground conditions have been obtained from records, surface indications and data furnished by others. The information furnished is solely for the convenience of the Contractor without any warranty, expressed or implied as to its accuracy or completeness. To the extent permitted by law, the Contractor shall make no claim against the Owner or Architect or the Construction Manager with respect to the accuracy or completeness of such information if erroneous, or if the conditions found at the time of construction.

### **§ 3.21 Construction Stresses**

**§ 3.21.1** The Contractor shall be solely responsible for the load conditions created during construction. The Contractor shall be responsible for repairing any structure which is dislocated, over strained, or damaged during construction.

**§ 3.21.2** The Contractor is responsible for restoration and/or repair of utilities, property, buildings, pavement, walkways, roads, etc. damaged by its activities.

### **§ 3.22 Training and Instructions**

**§ 3.22.1** Upon Substantial Completion of the Work, the Contractor shall orient and instruct the Owner's designated personnel in the operation and maintenance of all equipment furnished by the Contractor and shall turn over all pertinent literature and operational manuals relating to the equipment. The format for organizing, binding, and delivering such manuals shall be as described in the Specifications.

### **§ 3.23 Daily Records Clause**

**§ 3.23.1** 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.

**§ 3.23.2** 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.

**§ 3.23.3** 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, and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.4** If the employment of the Architect or Construction Manager is terminated, the Owner shall employ a successor Architect or Construction Manager.

**§ 4.1.5** The Architect shall be deemed a third-party beneficiary of the Contract and the General Conditions of the Construction Contract and Supplementary Conditions. As such, where Architect incurs additional costs as a result of actions of the Contractor or any of its Subcontractors and Architect is not entitled to compensations for such costs by Owner as Additional Services, such additional cost shall be paid by the Contractor directly to the Architect as Architect's current rates.

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

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and 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 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, 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, 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. 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.

§ 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 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 Architect will prepare Change Orders and Construction Change Directives. The Construction Manager shall review, approve and sign all Project Change Orders and Construction Change Directives in conjunction with the Owner. The Construction Manager will review change order requests, assist in negotiating the change order requests and submit recommendations to the Architect and Owner.

§ 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 perform a portion of the Work on the Project. 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 on the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after 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 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.

### § 5.3 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.
- .3 Any Subcontract over \$5,000.00 shall be in writing.

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

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

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

§ 5.4.4 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.

§ 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.

#### **§ 6.2 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.

§ 6.2.2 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.

§ 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.

§ 7.1.1.1 Construction Change Directive: Architect may issue a document, on AIA Form G714, signed by Owner, instructing Contractor to proceed with a change in the Work, for subsequent inclusion in a Change Order. The Document shall describe the changes in the Work and designates method of determining any change in Contract Sum or Contract Time.

1. The document will describe the required changes and will designate method of determining any change in Contract Sum or Contract time.
2. Promptly execute the change.

§ 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.

§ 7.1.2.1 Proposal Request: Architect may issue a document which includes a detailed description of a proposed change with supplementary or revised Drawings and specifications. Contractor shall prepare and submit a fixed price quotation within 7 calendar days of receipt of such documents.

§ 7.1.2.2 Submit to the Construction Manager, the Name of the Individual Authorized to receive change documents and who will be responsible for informing others in contractor's employ or subcontractors of changes to the Contract Documents.

§ 7.1.2.3 Contractor may propose a change by submitting a request for change to the Construction Manager, describing the proposed change and its full effect on the Work, with a statement describing the reason for the change, and the effect on the Contract Sum and Contract time with full documentation and a statement describing the effect on Work by separate or other contractors. The Construction Manager Shall Submit to the Architect for review.

§ 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.

§ 7.1.4 Changes in the Work involving additional Work or deletion of Work whether or not resulting in an addition to or subtraction from the Contract Sum shall not be made until the Contractor submits to the Construction Manager the cost of the added or deleted Work with a complete and detailed listing of all Subcontractors involved, all materials, labor and equipment.

§ 7.1.4.1 Overhead and profit as described in § 7.1.7 and § 7.1.7.1 may be added to the cost of a Claim for additional Work *only* when the source of monies for such additional Work is not an Allowance included in the Contract Sum or any other monies for Work included in the Contract Sum.

**§ 7.1.4.2** Changes in the Work whether or not involving additions or deductions from the Contract Sum shall not be made until an appropriate Change Order or Change Directive have been issued.

**§ 7.1.4.3** ALL CHANGE ORDERS MUST HAVE THE APPROVAL OF THE OWNER AND ARCHITECT IN WRITING.

**§ 7.1.5** Actual cost of labor and material shall be defined as the amount paid for the following items, to the extent determined reasonable and necessary:

- .1** Cost of materials delivered to the job site for incorporation into the contract work.
- .2** Wage paid to workers and foreman and wage supplements paid to labor organizations in accordance with current labor agreements.
- .3** Premiums or taxes paid by the Contractor for worker's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law, net of actual and anticipated refunds and rebates. (Not to be included in calculation of overhead and profit.)
- .4** Sales taxes as required by law.
- .5** Allowance for use of construction equipment (exclusive of hand tools and minor equipment), as approved for use by the Architect. The rate on self-owned equipment used for periods of under 1 week will be the Associated Equipment Distributor's published monthly rate divided by 22 days to establish a daily rate and divided again by 8 hours to establish an hourly rate. Equipment used for periods of 5 days or more will be billed at a rate equal to 45 percent of the published monthly rate. In the alternative, the Architect may approve the reimbursement of a rate representing the allocable costs of ownership. Self-owned equipment is defined to include equipment rented from controlled or affiliated companies. Rented equipment will be paid for at the actual rental cost. Gasoline, oil and grease required for operation and maintenance will be paid for at the actual cost. When, in the opinion of the Contractor and as approved by the Architect, suitable equipment is not available on the site, the moving of said equipment to and from the site will be paid for at actual cost.

**§ 7.1.6** Overhead shall include insurance other than those incidental to labor mentioned above, premiums on bonds required by the Contractor, Contractor's Supervisory employees, office management, home and field office expenses, transportation costs and both manual and power small tools and manual and power small equipment.

**§ 7.1.6.1** For Work done by the Prime Contractor's own forces, mark-up for combined overhead and profit on materials and on cost of labor shall not exceed 15%.

- .1** Work authorized under Article §3.8 Allowances are not subject to overhead and profit.

**§ 7.1.6.2** For Work done by the Subcontractors, mark-up of costs as defined herein by Subcontractor's for combined overhead and profit on materials and on cost of labor shall not exceed 10%.

- .1** To this amount, 5% may be added for the Prime Contractor's combined overhead and profit.
- .2** Work authorized under Article §3.8 Allowances are not subject to overhead and profit.

**§ 7.1.7** To facilitate reviewing quotations for either extra charges or deductions, all proposals shall be accompanied by a complete itemization of costs including labor, materials, subcontracts, and if allowed, mark-ups for overhead and profit. Subcontracts shall be similarly itemized. In no case will a change involving over \$1,000.00 be approved without itemization.

**§ 7.1.7.1** If requested, the Contractor shall submit detailed quotations from material suppliers.

**§ 7.1.8** Regardless of the method used to determine the value of any change, the Contractor will be required to submit evidence satisfactory to the Architect to substantiate each and every item that constitutes his proposal of the value of the change. The amounts allowed for overhead and profit shall not exceed the applicable percentages as established in the two (2) following Sections:

**§ 7.1.8.1** If the Work is done directly by the Contractor, overhead and profit in the amount of 15% may be added to the cost proposal. The percentages for overhead and profit may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the percentages set forth in the paragraph. Overhead and profit percentages are not to be applied to the premium portion of overtime pay.

**§ 7.1.8.2** If the Work is done by a subcontractor, subcontractor's overhead and profit in the amount of 10% may be added to the cost of labor and materials. To this amount, there may be added 5 percent for the Contractor's combined overhead and profit. Overhead and profit percentages are not to be applied to the premium portion of overtime pay.

**§ 7.1.9** Whenever the cost of any Work is to be determined pursuant to § 7.1.1 thru § 7.1.8, Contractor will submit in form acceptable to the Construction Manager and Architect an itemized cost breakdown together with supporting data.

**§ 7.1.9.1** In computing the value of a change order which involves additions and deductions of work and the added work exceed the omitted work, overhead and profit shall be computed on the amount by which the cost of additional labor and materials exceeds the cost of the omitted labor and material, except no additional overhead and profit shall be allowed on value of work determined in accordance with § 7.1.5.

**§ 7.1.9.2** In computing the value of a change order which involves deductions and additions and the Work omitted exceeds the added Work, the Contractor will be allowed to retain the overhead and profit on the amount by which the omitted Work exceeds the added Work, except that no overhead and profit shall be retained on value of work.

**§ 7.1.9.3** The Contractor may retain overhead and profit on a change order which involves deductions only, except that no overhead and profit shall be considered on value of Work."

## **§ 7.2 Change Orders**

A Change Order is a written instrument prepared by the Architect 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.

## **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner, Contractor, 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.

**§ 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. Lump sum adjustment shall be substantiated by submitting evidence of actual costs to the Construction Manager and Architect for 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
- .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 allowance for overhead and profit in accordance with § 7.1.8, § 7.1.8.1, § 7.1.8.2, § 7.1.9, § 7.1.9.1, § 7.1.9.2, § 7.1.9.3, and when permitted by § 7.1.6 and § 7.1.6.1. 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 manual and small power tools and manual and small power equipment, whether rented from the Contractor or others;
- .4 Costs of permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of consumable supplies.

§ 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 Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a Change Order.

§ 7.3.8 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.

§ 7.3.9 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.

*(Paragraph deleted)*

#### § 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 Unit Prices

§ 7.5.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of § 7.1.1.1 through § 7.5.1.4 inclusive).

§ 7.5.1.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Architect in accordance with § 7.5.4.

§ 7.5.1.2 Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

§ 7.5.1.3 Where the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of work and if Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

§ 7.5.1.4 Construction Manager will determine the actual quantities and classifications of unit price work performed by Contractor. Construction Manager and Architect will review with the Contractor, Architect's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Architect's written decisions thereon will be final and binding upon Construction Manager, Owner and Contractor unless, within 10 days after the date of any such decision, either Owner or Contractor delivers to the other party to the Agreement and to Architect written notice of intention to appeal from such a decision.

#### § 7.6 Alternates

§ 7.6.1 Where the Work involved is covered by Alternate contained in the Contract Documents, the Owner shall have the right of selection in respect to any or all of the Alternates as Bid. The Contractor shall provide the Owner thirty (30) days' written notice when the doing said work of an Alternate impacts the new Work or the removal of materials/products already installed or the acceptance of the Alternate will increase the Contractor's Contract amount.

#### § 7.7 Field Orders

§ 7.7.1 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 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.

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

§ 7.7.3 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.

#### § 8.2 Progress and Completion

§ 8.2.1 **TIME IS OF THE ESSENCE IN THE COMMENCEMENT, EXECUTION AND CONSTRUCTION OF THE WORK.** Contractor shall be responsible for all direct and consequential damages to Owner, Construction Manager, and Architect arising from any delay of Contractor, its Subcontractors and suppliers, in performing or completing the Work in accordance with the time requirements. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.1.1 Contractor shall cooperate with the Owner, Construction Manager, Architect and other Contractors on the Project, making every reasonable effort to reduce the contract time.

§ 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.

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

§ 8.2.3 Contractor shall do all things necessary to ensure the prosecution of the Work in accordance with any one or more of the following as determined by the Construction Manager and the Owner, in their discretion:

- .1 Project schedules and revisions thereof;
- .2 The time requirements for various portions of Work;
- .3 The requirements of the Project including, but not limited to, coordination requirements as may from time to time be known to Contractor;
- .4 Schedules of the Work provided by Contractor to Construction Manager upon the Owner's request.

§ 8.2.4 If the Contractor does not achieve Substantial Completion within the Contract Time established in the Agreement between the Owner and the Contractor, or in a subsequent Change Order, the Contractor shall be liable to the Owner, in addition to any actual or consequential damages, for the costs of reimbursements to the Owner's Agents including, but not limited to, the Construction Manager and Architect for their services attributable to this delay.

§ 8.2.5 Should the progress of the Work and/or other Work be delayed by any fault, neglect, act or failure to act of Contractor or any of its Subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to Owner, Construction Manager, or Architect or for which Owner, Construction Manager, or Architect may become liable, Contractor shall hold Owner, Construction Manager, and Architect harmless from and indemnify Owner, Construction Manager, and Architect against all such additional cost, expense liability or damage in accordance with the provisions of Article 11.

§ 8.2.6 The Work shall be performed during designated working hours, except that in the event of emergency or when necessary to perform the Work in accordance with the requirements of § 8.2, Work shall be performed at Contractor's cost and expense on other shifts, overtime, Saturdays, Sundays, Holidays and at other times, if permission to do so has been obtained in writing from Owner. Without limiting the requirements of the preceding sentence, if the progress of the Work or of the Project has been delayed by any fault, neglect, act or failure to act of Contractor or any of its Subcontractors or suppliers, Contractor shall work such overtime, at Contractor's cost and expense as aforesaid, as Construction Manager shall deem necessary or desirable to make up for all time lost and to avoid delay in the completion of the Work and of the Project. The failure by Construction Manager to direct Contractor to engage in such overtime shall not relieve Contractor of the consequences of its delay.

§ 8.2.7 Unless otherwise noted, the date of commencement of the Work is the date established in the Agreement. Contractor shall organize construction schedules as specified in § 3.10, Contractor's Construction Schedules. The commencement date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

§ 8.2.8 The Construction Manager may direct acceleration of the Work so that it may be performed in advance of the schedules, time requirements and Project requirements. If so directed, Contractor shall increase its staff and/or work overtime. Contractor will not be entitled to additional compensation for Work performed outside of designated working hours, except as approved by Owner. Provided that Contractor is not in default under the Contract, and Owner has issued the aforesaid authorization, there shall be added to the Contract Sum as actual out-of-pocket amount equal to:

- .1 Additional premiums on wages actually paid, at rates that have been accepted by Construction Manager and Architect
- .2 Taxes imposed by law on such additional wages;
- .3 Premiums for worker's compensation and liability insurance if required to be paid on such additional wages.

Written authorization for overtime work that exceeds \$500.00 for which Contractor intends to charge the Owner in any one week shall be invalid unless confirmed in writing by the Owner, it being understood that Owner's Designated Representative shall not have authority to authorize such overtime which exceeds \$500.00 in any one week.

**§ 8.2.9** In no case shall the contractor delay the progress of the Work or any part thereof on account of changes in the Work or disputes caused by proposed or ordered changes in the Work or any disputes or dis-agreements as to the equitable value of such changes.

**§ 8.2.10** Contractor and Contractor's Surety shall be strictly accountable for completion as a condition to satisfactorily contractual performance.

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

**§ 8.3.1** Should Contractor be obstructed or delayed in the commencement, prosecution or completion of the Work, without fault on its part, by reason of failure to act, direction, order, neglect, delay or default of the Owner, Construction Manager, or the Architect; by changes in the Work; fire, lightning, earthquake, enemy action, act of God or similar catastrophe; by Governmental restrictions with respect to materials or labor, or by an industry-wide strike beyond Contractor's reasonable control, then Contractor shall be entitled to an extension of time lost by reason of any and all causes aforesaid, but no Claim for extension of time on account of delay shall be allowed unless a Claim in writing therefore is presented to Construction Manager with reasonable diligence but in any event not later than fifteen (15) days after the commencement of such claimed delay. Except for the causes specifically listed above in this sub-section, no other cause or causes of delays shall give rise to an extension of time to perform the Work. The granting of an extension of time is conditioned upon Contractor's timely submission of the aforesaid written notice. Except to the extent, if any, expressly prohibited by law, Contractor expressly agrees not to make, and hereby waives, any Claim for damages, including those resulting from increased labor or material cost, on account of any delay, obstruction or hindrance for any cause whatsoever, whether or not foreseeable and whether or not anticipated including but not limited to the aforescribed causes, and agrees that the sole right and remedy therefore shall be extension of time, provided the requisite condition as to written Claim has been met.

**§ 8.3.2** If Contractor claims an increase in the Contract Sum or an extension in the completion time required by reason of a change in the Work, Contractor shall give Construction Manager and Architect written notice within fifteen (15) days after Contractor's knowledge of the occurrence of the matter giving rise to such Claim. This notice shall be given by Contractor before proceeding to execute the changed Work, except in an emergency endangering life or property in which case Contractor shall proceed in accordance with § 10.3. No such Claim will be valid unless notice is given as required in this section. Contractor shall proceed to execute the Work, even though the increase or time extension has not been agreed upon.

**§ 8.3.2.1** Extension of time, if requested by the Contractor, shall only be considered after the Contractor has made reasonable effort to recover the lost time. These efforts shall be documented by the Contractor and submitted to the Architect.

**§ 8.3.2.2** An extension, or extensions, of time may be granted subject to the provisions of this article, but only after written application therefore by the contractor in accordance with Article 15.

**§ 8.3.2.3** An extension of time shall be only for the number of days of delay that the Construction Manager may determine to be due solely to the causes set forth in the application for 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 Construction Manager.

**§ 8.3.3** Contractor shall not be allowed an extension of time unless Contractor has established to the satisfaction of the Owner, Construction Manager, and Architect that the delay claimed by Contractor is to a portion of the Work on the critical path of the work schedule.

**§ 8.3.4** Under no circumstances will Contractor look to or make a Claim against Owner, Construction Manager, or Architect for the consequences of any delay resulting from directions given or not given by Construction Manager including scheduling and coordination of the Work or resulting from Architect's preparation of Drawings and Specifications or review of Shop Drawings.

§ 8.3.5 When the Contract Time has been extended, such extension of time shall not be considered as justification for extra compensation to the Contractor for administrative costs or other similar reasons.

#### § 8.4 Damages for Delay

§ 8.4.1 **Architectural Changes for Delay in Completion.** If the entire work is not fully completed within the maximum allowable time for completion specified in the agreement, including any extensions granted thereto, architectural charges incurred by the Owner, from the completion date thus established to the actual final Date of Substantial Completion of the work, shall be charges to the Contractor for failing to complete its work by the stipulated date and be deducted from the final monies due the Contractor. Such charges shall be determined at the rate of \$750.00 per day per man for each and every man and day that the Architect and Construction Manager needs to furnish project management or an on-site Construction Manager Representative.

§ 8.4.2 **Liquidated Damages for Delay in Completion.** Failure to complete the work within the maximum allowable time for completion specified in the Agreement and/or the Milestone Schedule, including any extensions granted thereto, or failure to meet an intermediate milestone date as established by the Milestone Schedule, shall entitle the Owner to deduct from monies due to the Contractor, or to otherwise charge the Contractor, as liquidated damages the amount per calendar day of One Thousand Dollars (\$1,000.00) for each calendar day beyond such maximum allowable time in the completion of the work. Such amount of liquidated damages shall be in addition to the \$750 per day charges for delay described in Paragraph 8.4.1.

The absence of a liquidated damage amount and/or other criteria concerning same shall not preclude the Owner from exercising its rights. All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 8 shall not exclude recovery by Owner for damages (including but not limited to fees and charges of Engineers, Architects, Construction Manager, Attorneys and other professionals and court and litigation costs) for delay by the Contractor.

§ 8.4.3 **No Damage for Delay.** Each Prime Contractor agrees to make no claims for delay in the performance of this Contract occasioned by an act or omission, or act of the Owner of any of its representatives and agrees that such a claim shall be fully compensated for by an extension of time to complete the performance of the work as provided herein.

### 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.

#### § 9.2 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 Submit a printed schedule on AIA form G703 – Application and Certificate for Payment Continuation Sheet. Submit in duplicate to the Architect within 15 days after date of Owner-Contractor Agreement.

§ 9.2.2 Format: Utilize the Table of Contents of the Project Manual. Identify each line item with number and title of the Specification Section for each Project site. Provide breakdown of both labor and materials.

§ 9.2.3 Include within each line item a direct proportional amount of contractor's overhead and profit.

§ 9.2.4 Line item for Record Drawings which are to be turned over to the Owner at the end of the Project shall not be less than 0.15 percent of the Contract price.

### § 9.2.5 Schedule of Contract Values

- .1 The list of items shall include all items included in all Divisions and Sections of the specifications and shall be shown as separate line items.
- .2 The following items shall also be listed separately as line items (with their respective values):
  - Bond and Project Insurance.
  - Mobilization and Demobilization.
  - Superintendence.
  - Training, Operations and Maintenance Manual, Construction Record Documents.
  - Each Allowance associated with the Contract.
  - Each Alternate accepted.
  - Each Change Directive as it is issued; to be listed below the associated allowance.
  - Each Change Order as it is issued.
  - Warranties.
  - Records Drawings.
  - Temporary Facilities.
  - Cleaning.
  - Submittals.
  - Items to be Completed List.
- .3 Contractor shall maintain and keep current all changes to the Schedule of Values caused by Change Orders, Construction Change Directives or other authorized changes. Such revised Schedule of Values shall be presented monthly with the Application for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 Applications for payment shall be made monthly on the current AIA Form G732-2019 Application and Certificate for Payment and G703 Continuation Sheet for operations completed in accordance with the Approved Schedule of Values. Applications shall be based on the contract prices of labor and materials incorporated into the Work and of materials suitably stored and secured up to the last day of the previous month, less retainage and less the aggregate of previous payments. Change orders when approved shall be listed at the bottom of the last sheet of the payment application.

§ 9.3.1.1 At least twenty (20) days prior to date established for each progress payment, each Contractor shall submit to the Construction Manager for its review, a preliminary pencil copy of an itemized Application for Payment completed in accordance with the approved Schedule(s) of Values.

§ 9.3.1.2 Such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives but not included in Change Orders. Such items, if anticipated to be paid from an Allowance, shall be listed under that associated Allowance.

§ 9.3.1.3 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

§ 9.3.1.4 All supporting data requested by the Construction Manager and Architect from Subcontractors and material suppliers necessary to substantiate the Contractor's right to payment shall be furnished by the Contractor.

§ 9.3.1.5 Until the Contract-scheduled date of Substantial Completion (including authorized adjustment), the Owner shall pay 95% of the amount due the Contractor on account of progress payments, less an amount equal to 250% of the amount of any Claims, liens, or judgments against the Contractor which have not been satisfactorily discharged.

- .1 Retainage resulting from § 9.3.1.5 shall be 5% plus an amount equal to 200% of the amount of any Claims, liens, or judgments against the Contractor which have not been satisfactorily discharged.
- .2 At Substantial Completion, when satisfied with the progress of the Work, the Owner, with Consent of Surety, may adjust the amount retained from previous progress payments in accordance with § 9.8.3.

- .3 The full retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and the Architect, if the Surety withholds his consent or for other good and sufficient reasons.

§ 9.3.1.6 Each Contractor shall submit three (3) final copies of their Application for Payment, incorporating those revisions noted on the pencil copies, to the Construction Manager within two (2) days after being notified that the draft copy, with revisions, is acceptable.

§ 9.3.1.7 The final copies of each Application for Payment (AIA Form G732-2019) shall be signed by an officer of the Contractor whose signature shall be notarized in the space provided.

§ 9.3.1.8 Applications shall be based on the completed Work as described above less retainage, and less the aggregate of previous payments. Change Orders when approved shall be listed at the bottom of the last sheet of the payment application.

§ 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.

§ 9.3.2.1 Procedures required by Owner shall include, but are not necessarily limited to, submission by the Contractor to the Construction Manager and Architect of bills of sale and bills of lading for such materials and equipment, provision of opportunity for the Construction Manager's and Architect's visual verification that such materials and equipment are in face in storage; and, if stored off-site, submission by the contractor of verification that such 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, and upon which partial payments have been made, shall become the property of the Owner. The care and protection of such materials and equipment shall remain the responsibility of the Contractor until incorporation into the Work, including property storage and maintenance of insurance coverage against theft, damage and fire on a replacement cost basis without voluntary deductible.

#### § 9.3.2.3 Stored Materials

- .1 If the Contractor intends to request payment for materials stored on the site in accordance with the provisions of the Contract Documents, he must identify same on the current Contractor's Application for Payment form. The value of **previous** months' "stored materials" shall be included in the "Work Completed" column of the current application.
- .2 The relationship of labor and materials as indicated on the Payment Application shall be the basis for establishing the rate of payment for the transfer of material stored to materials installed.
- .3 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.
- .4 Payment for stored materials shall be in the amount of 95% of the value of stored materials less 5% retainage.

§ 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 keep the Owner and the Owner's property (including funds for payment under the Project) free from all liens, legal or equitable, arising out of Contractor's Work hereunder. If any such lien is filed with

the Owner by anyone claiming by, through or under the Contractor, the Contractor shall discharge the lien within 10 days of the filing thereof. The Contractor further expressly agrees to defend the Owner, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against the Owner as a result of liens filed against payments due the Contractor or the Work, the site of any of the Work, the Project site and any improvements thereon or any portion of the property of the Owner. The Contractor hereby agrees to indemnify and hold the Owner 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. The Owner agrees to release any payments with as a result of a duly filed lien, upon compliance by the Contractor with the applicable discharge or vacatur provisions of the Lien Law.

**§ 9.3.4** The Contractor and all of its subcontractors shall submit to the Owner, within thirty (30) days after issuance of their first certified payroll and every thirty (30) days thereafter, a transcript of the original certified payroll record, as provided by the Labor Law, subscribed, and affirmed as true under the penalties of perjury for the Contractor and all its Subcontractors. Failure to do so shall be cause for the Owner to withhold payment until such records are received.

**§ 9.3.5** When the Construction Manager or Architects requires substantiating information, submit data justifying dollar amount in question. Provide one copy of data with cover letter for each copy of submittal. Show application number and date, and line item by number and description."

**§ 9.3.6** The Contractor further expressly undertakes to defend the Owner, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Owner 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 Owners (referred to collectively as liens in §9.3.3). The Contractor hereby agrees to indemnify and hold Owner 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.

**§ 9.3.7** The Owner shall release any payments withheld due to a lien or a 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 the maximum amount prescribed by law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this § 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.

**§ 9.3.8** The Contractor agrees to waive any right which it may have to assert a mechanic's or other lien against the Project site and any improvements thereon, including, without limit, the Work itself. Furthermore, the Contractor will cause a similar provision, waiving any right to a mechanic's or other lien against the property, to be included in all of its subcontracts, any subcontracts, and all contracts with material suppliers. Upon execution of the Agreement, the Contractor shall also execute the waiver of lien attached to the Agreement and made a part thereof as an Exhibit.

#### **§ 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 and as permitted by State Law, 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, 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;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 any other breach of this Agreement.

§ 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 30 days after receipt, 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.

§ 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 suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

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

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

**§ 9.6.9** Upon Substantial Completion of the entire Work, the Contractor shall submit a requisition for the "contract balance". The Owner shall pay the remaining amount less the greater value of a lump sum of \$10,000 OR the sum of two- and one-half times the value of any items to be completed plus an amount necessary to satisfy any outstanding Claims, liens, or judgments against the Contractor. Until all remaining items of Work are satisfactory completed or corrected, the Owner may hold all retainage, including monies for all "uncompleted" items, until all items are completed, and closeout submittals are complete.

**§ 9.6.9.1** Contractors' requests for discontinuance of retainages shall be accompanied by a properly executed copy of the "Consent of Surety to Reduction in or Partial Release of Retainage", AIA Document G707A.

#### **§ 9.6.10 Retainage**

**§ 9.6.10.1** Applications for Payment shall include a retainage amount of not less than five percent (5%) of the value of the completed work. Reduction of retainage shall only be approved upon completion of the Work and when authorized by the Owner in writing.

#### **§ 9.7 Failure of Payment**

If the Construction Manager and Architect fail persistently to 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 fails persistently to pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect, then the Contractor may, upon thirty 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.

**§ 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.

**§ 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.

**§ 9.8.3.1** No partial payments will be made after the time fixed for the completion of the Work or the time to which completion may be extended under the terms of the Contract, until the full and final completion and acceptance of all Work herein agreed upon.

**§ 9.8.3.2** Where project includes heating and/or air conditioning or other systems that are not put into operation at the time of occupancy, a sum shall be withheld until these systems have operated to the general satisfaction of the Architect. The retained amount shall approximate 5% of the cost of the systems as determined by the cost breakdown submitted.

**§ 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 or this Agreement.

**§ 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** If the Architect and/or the Construction Manager are required to inspect the Work more than two (2) times prior to certifying the Work as being substantially complete on account of the discovery of one or more items that are not sufficiently complete, the Contractor shall be liable to the Owner for the amount of any costs, additional fees or compensation due from or paid by the Owner to the Architect and/or the Construction Manager for the additional inspections.

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

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor 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. The Contractor will provide the Owner and Construction Manager with photographs documenting the condition of the space to be occupied. The photographs must be dated and supplied within three (3) business days of the inspection. Any subsequent damage to the space which cannot be confirmed by the Contractor's photographs (as occurring as a result of the Owner's occupancy) will be repaired by the Contractor at no additional cost to the Owner.

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

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

**§ 9.10.1** Upon 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.

**§ 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 its discretion.

**§ 9.10.1.2** If the Architect and Construction Manager are required to perform additional inspections subsequent to the "final inspection" because the Work fails to comply with the requirements of the Contract, the amount of compensation paid to the Architect and Construction Manager 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) 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.
  - (a) 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 requested in § 9.10.2 above, the Contractor shall submit releases or waivers of liens from each Subcontractor, material supplier, and others with lien rights against the property of the Owner and shall submit a list of such parties.

**§ 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;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 Costs, loss or damages sustained, either prior to or subsequent to such payment, as a result of any breach of the Contract, or any wrongful act or omission of the Contractor or any Subcontractor.

§ 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.

## 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.

§ 10.1.1 Contractor is fully responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and the Work site consistent with applicable laws and regulations, and generally accepted standards in the construction industry. Contractor acknowledges and agrees that it is fully responsible for the supervision and control of the Work and of Contractor's employees, subcontractors and/or suppliers, (and any party employed directly or indirectly by any of them, or for whom any of them are legally responsible) and the means, methods and manner in which the Work is performed.

§ 10.1.2 Contractor specifically agrees to provide all necessary equipment, give all required notices, perform all required tests, and to employ all necessary safety measures and procedures to protect its employees, agents, subcontractors, and all other persons at the Project site from any hazards created directly or indirectly by Contractor's operation or performance of the Work, and any hazards which are not created by Contractor's operations or performance of the Work to which such parties are exposed at the Project site as a result of Contractor's operations or performance of the Work. In the event that equipment or safety devices are required, Contractor agrees that it will obtain such equipment or safety devices and employ same at its sole expense, and will strictly adhere to all provisions of the Occupational Safety and Health Act, as well as any State statutes, codes, rules and regulations pertaining to the safety or property as may be deemed applicable to the Contractor's work or the work of any person or party directly or indirectly employed by Contractor or for whom contractor is responsible. Contractor agrees that it shall be Contractor's sole responsibility to ensure that each of its employees, subcontractors and suppliers are also fully aware and in compliance with all such statutes, codes, rules and regulations at all times.

§ 10.1.3 From the commencement until the acceptance of the Work, Contractor shall be solely responsible for the care of the Work covered by the Contract and for the materials, supplies and equipment delivered at the Site intended to be used in the Work, and all injury or damage to the same from whatever cause shall be made good at this expense before the final payment is made. Contractor shall provide suitable means of protection for and shall protect all materials intended to be used in the Work, all work in progress, and all completed work. Contractor shall take all necessary precautions to prevent injury or damage to the Work by flood, fire freezing or from inclemencies of the weather.

§ 10.1.4 Not by way of limitation of the foregoing, at the end of each workday, Contractor shall secure all power tools and other potentially dangerous tools and equipment and shall remove means of access to areas of the Work site, so as to further protect the safety of occupants of the premises during such off-work hours.

§ 10.1.5 Contractor's obligations under this section are not dependent upon any question of negligence on its part or on the part of its officers, agents, servants or employees, and neither the approval by the Architect or the Owner to Architect to call attention to improper or inadequate methods or to require a change in methods nor the neglect of the Architect or the Owner to direct Contractor to take any particular precautions or to refrain from doing any particular thing shall excuse the Contractor from his obligations hereunder in case of any such injury to person or damage to property. The provisions of this section are intended for the sole benefit and protection of the Owner and shall not create any cause of action in favor of any person, corporation entity, other than the Owner.

### § 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .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.

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

§ 10.2.2.1 The Contractor acknowledges that certain applicable laws, including, but not limited to, Sections 240 and 241 of New York State Labor Law, may impose liability on the Owner for injuries to persons employed by the Contractor or by its Subcontractors or Sub-subcontractors. As between the Owner and the Contractor (or any of the Contractor's Subcontractors or Sub-subcontractors or any persons for which any of them shall be responsible), the Contractor shall be solely responsible for compliance with all such laws to the extent they pertain to the safety or protection of persons on the Project site or performing the Work. Any claim, charge, penalty or cause of action arising out of or on account of any such law shall be subject to Section 3.18.

§ 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.

§ 10.2.5 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**

**Injury or Damage to Person or Property.** If the Contractor suffers injury or damage to persons or property because of an act or omission of the Owner or of any of the Owner's employees or agents or any others for whose acts the Owner is legally responsible, the Contractor shall give written notice thereof to the Owner and the Architect within a reasonable time not exceeding 2 days after first observance. The notice shall provide sufficient detail to enable to Owner to investigate the matter. If a Claim for additional cost or additional time is related to this Claim, it shall be made in accordance with the provisions of Article 15.

**§ 10.2.9 Restoration.** If during the construction, public or private property is damaged or destroyed as a result of its Work, the Contractor responsible shall, at its own expense, restore such property to a condition equal to that existing before such damage or injury was done, by cleaning up, repairing, rebuilding or replacing it, or otherwise making good such damage or destruction in an acceptable manner.

**§ 10.2.10 OSHA.** In addition to all requirements set forth herein, all Contractors and Subcontractors who perform any Work under this Contract will fully comply with the provisions of the Federal Occupational Safety and Health Act (OSHA) of 1970 and with any rules and regulations pursuant to the Act. This requirement shall apply continuously and not be limited to normal Working hours. The duty of the Construction Manager, Architect to conduct construction review of the Contractor's or its Subcontractor's performance is not intended to include review of the adequacy of the Contractor's or its Subcontractor's safety measures in, on or near the construction site or buildings.

**§ 10.2.11 Welding:**

- .1 All welding shall be done in accordance with the American Welding Society Code for Arch Welding Society, certified for current year.
- .2 When cutting or welding is to be done, the Owner **MUST** be notified prior to start. In addition, the Contractor for the Work shall provide a **fire guard** with proper fire extinguisher for duration of cutting and welding work.
- .3 A welding curtain is to be installed around area where welding or cutting is to be done. No welding machines will be tied into electric panels without express permission from the Owner. Portable gasoline driven generators may **not** be used without the expressed permission of the Owner.
- .4 Obtain Owner's permission for each location in existing building where welding is required. Owner's stipulated requirements shall be adhered to.

**§ 10.2.12 Open Burning.** Open burning on the site is prohibited. All possible precautions shall be taken to prevent fires.

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

**§ 10.2.13** 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 from damage by any cause.

**§ 10.2.14** The Contractor shall promptly report, in writing, to the Construction Manager, Architect and the Owner all accidents arising out of or in connection with the Work that causes property damage, personal injury or death, giving full details and statements of any witnesses. In addition, if death, serious personal injury or serious property damage is caused, the accident shall be reported immediately by telephone or messenger to the above parties."

**§ 10.2.15** The Contractor shall be solely responsible for the conditions which develop during construction and in the event any structure is dislocated, over strained, or damaged so as to affect its usefulness, the Contractor shall be solely responsible. The Contractor shall take whatever steps necessary to strengthen, relocate or rebuild the structure to meet requirements.

**§ 10.2.16** 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.

**§ 10.2.17** 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.**

**§ 10.2.18** 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.

**§ 10.2.19** 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.

**§ 10.2.20** 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.

**§ 10.2.21** 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.

**§ 10.2.22** 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 written 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.

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

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

§ 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.

#### § 10.4 Emergencies

§ 10.4.1 In an emergency affecting life, the Work, or the Owner or Owner's property, Contractor, without special instructions or authorization from Construction Manager or Architect, shall take the action necessary to deal adequately with such emergency. Notice of any such action shall be given by Contractor to Construction Manager, Architect and Owner as soon as is practicable, but not later than 2 days following the occurrence.

### 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 occurrence-based insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and rated B+ or better by A.M. Best Company and to which the Owner has no reasonable objection. 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.

§ 11.1.1.1 Within the time period set by the Owner after award of the Contract, and before the effective date of the Agreement, the Contractor shall cause the authorized representative of the insurance company to completely fill out and execute the Certificate of Insurance form which is bound with the Agreement section of the Contract Documents, such instrument certifying the kinds and amounts of insurance being issued, including statement that coverage provided under the policies will not be canceled or materially changed until at least 30 days prior written notice has been given to the Owner. The Contractor shall also furnish the Owner one (1) duplicate of the original policy covering each kind of insurance issued. Each subcontractor shall follow the identical procedure, and it shall not commence work until the Certificate of Insurance, including any requested duplicate policies, has been submitted to and approved by the Owner. The Contractor shall furnish to the Owner insurance certificates for all subcontractors with the amount of insurance as required herein. Contractor shall include New York Construction Certificate of Liability Insurance Addendum – Accord Form 855 with the Certificate of Insurance.

§ 11.1.1.2 All claims against the Contractor or its subcontractors, arising from the performance of the work or conditions incidental thereto, must be investigated immediately by the insurance company furnishing the applicable coverage. The Contractor shall require the insurance company to furnish, to the Architect and Owner, written reports following the investigation and the disposition of each claim or demand by the owner; a status report shall be provided to the Owner and Architect on all claims more than two months outstanding.

§ 11.1.1.3 All insurance coverage furnished by subcontractors shall remain in force until their work has been completed and the subcontractor does not intend to gain further access to the site, and the Contractor has released said subcontractor from further liability associated therewith. All liability insurance furnished by the Contractor shall remain in force during the time intervals defined Article 8 – Time in General Conditions of the Contract for Construction and Supplementary Conditions. All property insurance furnished by Contractor shall remain in force until Owner approves Architect's Certificate of Substantial Completion and has made final payment to Contractor.

§ 11.1.1.4 The kinds and amounts of insurance are as follows:

Init.

- .1 **Worker's Compensation and Employer's Liability:** A policy shall be issued in compliance with the provisions of the Worker's Compensation Law.
- .2 **Non-Occupational Disability Benefits:** A policy shall be issued in compliance with the provisions of the Disability Benefits Law.
- .3 **Comprehensive General Liability** having limits of not less than:
 

General Aggregate (except Products Complete & Operations)	\$2,000,000
Products Complete & Operations Aggregate	\$1,000,000
- .4 **BODILY INJURY LIABILITY + PROPERTY DAMAGE LIABILITY** having limits of not less than the following:
 

Combined single limit	\$1,000,000.00 Each Occurrence
	\$2,000,000.00 Aggregate

for all damages arising during the life of the Contract, and shall include at least the following designated hazards:

- a. Premises and Operations
- b. Independent Contractors
- c. Completed Operations, including products
- d. Broad Form Property Damage, including "XCU" (explosion, collapse, and underground)
- e. Contractual Liability, covering indemnification assumed per requirements of Article 11 (AIA Document A232 -2019 General Conditions of the Contract for Construction, Construction Manager as advisor edition and Supplementary Conditions.
- f. Fire damage.
- g. Personal and Advertising Injury with Employment Exclusion deleted.
- h. Labor Law coverage is mandatory for all General Liability Policies.

Completed projects shall carry General Liability coverage for 2 years after substantial completion.

- .5 **Pollution/Special Hazards Liability:** Provide coverage for legal liability and expense for damage to property or bodily injury and death with respect to the removal, disturbance, handling, and disposal of contaminated or hazardous materials under this contract by the Contractor or any person or organization employed directly or indirectly by the Contractor. (NOTE: This coverage is required only for those contracts which contain work involving Asbestos Abatement Lead Hazard Control work, PCB Containing Material Removal, or Petroleum Remediation.) If included in Contractor's Umbrella Policy, this shall be detailed in the Umbrella Policy Documents.

Combined single limit	\$1,000,000.00 Each Occurrence
	\$2,000,000.00 Aggregate

- .6 **Comprehensive Automobile Liability** (including non-owned and hire automobiles), having limits of liability not less than \$1,000,000.00.

- .7 **Umbrella Liability** (mandatory):

\$2,000,000.00 for Contracts under \$2,000,000.00  
 \$5,000,000.00 for Contracts exceeding \$2,000,000.00  
 \$10,000,000.00 for Contracts exceeding \$7,000,000.00  
 \$15,000,000.00 for Contracts exceeding \$10,000,000.00  
 Labor Law Coverage is mandatory for all Umbrella Liability Policies

- .8 **Property Insurance (Builders Risk/Installation Floater):** To be provided by the Owner.

Each Contractor is responsible for all tools, equipment, materials, Work, etc., until Substantial Completion and possession by the Owner. Each Contractor shall provide insurance for theft as he may require for himself, his Subcontractors, and his employees' protection). The insurance coverage referred to in this subparagraph shall be in accordance with a standard Builder's Risk Policy used in the State where the project is located.

The Owner does not waive any rights of recovery or provide any waivers of subrogation for losses caused by negligent acts of the aforementioned parties. Any right of recovery or subrogation shall not affect payment of claims made by the Property Insurer to all the aforementioned parties including any negligent party.

- .9 Owner's Protective Liability:** Furnish to the Owner complete Owner's Protective Liability Insurance in the amounts specified in Coverage .3 above for Personal Bodily Injury Liability Insurance and for Property Damage Liability Insurance.
- .10 Additional Coverages:** The Architect, Construction Manager and Owner along with their respective officers, agents, and employees shall be named as additional insured for ongoing operations and products/completed operations on all Contractors' comprehensive general and automobile liability policies, bodily injury and property damage liability policies and umbrella liability policies which all must be primary and non-contributory with respect to additional insured's.
- .11 Per Project Aggregate:** Provide full aggregate general liability limits of each project.
- .12 Waiver of Subrogation:** To the fullest extent permitted by state law, a waiver of subrogation clause shall be added to the general liability, auto, and worker's compensation policies in favor of the Owner, its officers, agents, or employees with respect to this project. The Owner does not waive any rights of recovery or provide any waivers of subrogation for losses caused by negligent acts of the aforementioned parties. Any right of recovery or subrogation shall not affect payment of claims made by the Property Insurer to all the aforementioned parties including any negligent party."

**§ 11.1.1.5** The Contractor shall not commence Work at the project site under this Contract until Contractor has obtained all the insurance required herein and until such insurance has been accepted by the Owner, nor shall Work be commenced on their subcontracts until the same insurance for the Subcontractors has been obtained. The Owner and Architect may request copies of subcontractors' insurance certificate(s) and are to be provided to Owner and Architect by the Contractor upon request.

**§ 11.1.2** Each Contractor shall furnish Bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder in the amount of 100% of the accepted bid on the form indicated in the Information to Bidders, with such Sureties as may be agreeable to the Owner. The Premiums shall be paid by the Contractor.

**§ 11.1.2.1** The Contractor shall deliver the required Bond dated as of the date of the Contract or applicable letter of intent, whichever is earlier, to the Owner no later than the date of execution of the Contract, or if the Work is commenced prior thereto in response to a Notice to Proceed, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such Bond will be issued."

**§ 11.1.2.2** The Payment and Performance Bonds shall be written on AIA Document A312 Series and the Warranty Bond shall be written on AIA Document A313-2020 or such other forms as the Owner may approve.

**§ 11.1.2.3** The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power of attorney.

**§ 11.1.2.4** The Contractor shall provide the name and address of Surety for process of service as well as supply the contact information for the Surety representative responsible for the Bond, including the individual's name, address, telephone number, fax number and email address."

**§ 11.1.2.5** The Performance and Payment Bonds shall remain in full force and effect through the warranty period.

**§ 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.

**§ 11.1.3.1** The Contractor shall not commence Work at the project site under this Contract until Contractor has obtained all the insurance required herein and until such insurance has been accepted by the Owner, nor shall Work be commenced on their subcontracts until all similar insurance required of the Subcontractors has been obtained and accepted by the Owner.

**§ 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.

§ 11.3.1.1 As relates to § 11.3, the Owner does not waive any rights of recovery or provide any waivers of subrogation for losses caused by negligent acts of the aforementioned parties. Any right of recovery or subrogation shall not affect payment of claims made by the Property Insurer to all the aforementioned parties including any negligent party.

§ 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.

#### § 11.6 Appearance of Counsel

§ 11.6.1 If an action for bodily injury and/or property damage is commenced against Owner or Architect, which in the opinion of the Owner's Architect's legal counsel or insurance coordinator is covered by the indemnity provisions of Article 3, Contractor shall, upon Owner's written request, promptly cause Contractor's insurance carrier to have its attorneys appear timely in the action on behalf of Owner and/or Architect and provide the defense of Owner and/or Architect.

### 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 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, discovered before Substantial Completion, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the 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.

§ 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. *Exception:* Any correction made under this 12.2.2 or under any other guarantee or warranty required by or included in the Contract Documents shall likewise be subject to correction at Contractor's own expense if it is found not to be in accordance with the Contract Documents within one year after the date that such correction is accepted by the Owner.

§ 12.2.2.4 The guarantee-warranties required by § 12.2.2 shall be written in a form acceptable to the Owner, properly sworn to and signed by a responsible officer of the Contractor's firm.

§ 12.2.2.5 The Performance and Payment Bonds shall remain in effect and full force through this period.

§ 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.

§ 12.3.1 The Owner, with the advice of the Construction Manager and assistance of the Architect, shall determine the adjustment to the Contract Sum. The Contractor shall bear all direct, indirect and consequential costs attributable to the evaluation of and decision to accept such defective Work. Such costs for the efforts of the Construction Manager and Architect (at their current billing rates) and any other costs to the Owner will be charged to the Contractor through Change Order procedures.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

### § 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.

*(Paragraph deleted)*

### § 13.3 Rights and Remedies

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

§ 13.3.2 No action or failure to act by the Owner, 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. 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.

§ 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.

§ 13.4.7 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

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at a rate of 1% per annum.

### 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon thirty days' notice to the Owner, Construction Manager and Architect, and upon the failure of the Owner to cure the alleged grounds for termination within 14 days following receipt of said notice, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, 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 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of breach of a provision of the Contract Documents.
- .5 files for bankruptcy or other debtor insolvency relief;
- .6 an act of omission by the Contractor that stops, delays, interferes with or damages the Work;
- .7 any other failure by the Contractor to perform any other terms and conditions of their Contract;
- .8 disregards the authority of the Owner.

§ 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;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 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.

#### § 14.3 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 Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. 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.

#### **§ 14.4 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.

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed.

### **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. The Owner may, but is not required to, comply with the provisions of Article 15 when filing a Claim.

#### **§ 15.1.2 Time Limits on Claims**

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

**§ 15.1.2.1** An additional Claim made after any initial Claim has been filed with the Owner, Construction Manager and Architect will not be considered unless submitted in a timely manner and in accordance with Article 15."

**§ 15.1.2.2** Any Claim shall be sufficiently detailed and descriptive to allow for a complete evaluation. The Contractor shall furnish any information requested by the Owner or Architect in connection with this investigation within ten (10) business days of that request. Failure to provide the requested information shall constitute a waiver of the Claim.

**§ 15.1.2.3** All written Claims for additional cost, additional time, or damages shall include the time of occurrence, location and other identifying factors and shall be supported, at a minimum, by letters, photographs, journals and diaries, instructions, or other pertinent and applicable records, as the Architect and Owner may require.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by other parties or the 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 Owner 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 the Contractor under this Section 15.1.3.1 shall be initiated within 15 days after occurrence of the event giving rise to such Claim or within 15 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by other parties or the 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.

**§ 15.1.3.3** An additional Claim made after any initial Claim has been filed with the Owner and Architect will not be considered unless submitted in a timely manner and in accordance with Article 15.

**§ 15.1.3.4** Claims by the Contractor must be made by written notice in accordance with the following procedures:

- .1 The Contractor may submit a claim concerning a matter properly noticed in accordance with the time requirements of this Contract.
- .2 Failure by the Contractor to furnish the required claim documentation within the time set forth above shall constitute waiver of the Contractor's right to compensation for such claim.
- .3 Contractor shall furnish three (3) certified copies of the required claim documentation, with a copy submitted to the Owner and Architect. The claim documentation shall be complete when furnished. The evaluation of the Contractor's claim will be based, among other things, upon the Owner project records and the Contractor's furnished claim documentation.
- .4 Claim documentation shall conform to Generally Accepted Accounting Principles and shall be in the following format:
  - A. General Introduction
  - B. General Background Discussion
  - C. Issues
    - 1) Index of Issues (listed numerically)
    - 2) For **each** issue:
      - (a) Background
      - (b) Chronology
      - (c) Contractor's position (reason for Owner's potential liability)
      - (d) Supporting documentation of merit or entitlement
      - (e) Begin each issue on a new page
  - D. All critical path method schedules, (as planned, monthly updates, schedule revisions, and as-built) along with the computer disks of all schedules related to the claim.
  - E. Productivity exhibits (if appropriate)
  - F. Summary of Issues and Damages
- .5 Supporting documentation of merit for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to, general conditions; general requirements; technical specifications; drawings; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the Contractor's claim.
- .6 Supporting documentation of damages for each issue shall be cited, photocopies, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the bid; certified, detailed labor records including labor distribution reports; material and equipment procurement records; construction equipment ownership cost records or rental records; subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials necessary to support the Contractor's claim.
- .7 Each copy of the claim documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of these Contract Documents.

#### § 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.

§ 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 waives all Claims against the Owner for consequential damages arising out of or relating to this Contract. This  
*(Paragraphs deleted)*

waiver includes, but is not limited to, damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business losses and reputation damage, and for loss of profit. This waiver also is applicable, without limitation, to all consequential damages due to Owner's termination of the Contract in accordance with Article 14, and the Contractor's sole rights to payment in the event of any termination of the Contract by the Owner are limited to the payments expressly set forth in Article 14.

### § 15.1.8 Limitation and Waiver of Money Damages

§ 15.1.8.1 Notwithstanding anything else set forth in the Contract Documents or otherwise, the Owner shall not be liable to the Contractor and/or any Subcontractor for Claims or damages of any nature caused by or arising out of delays, impacts on schedule, schedule acceleration, schedule compression or by any breach of contract, delay in performance or other act of neglect by other Contractors or Subcontractors having Contracts for performance of any portion of Work. Except to the extent, if any, expressly prohibited by law the Contractor agrees not to make any Claim for such damages. The sole remedy against the Owner for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be subject to the Claims procedure set forth herein. The Contractor understands that it hereby agrees not to make, and hereby waives, any Claim for damages for delay from any cause whatsoever, including but not limited to, those resulting from increased labor or material costs; schedule acceleration, schedule compression, directions given or not given by the Construction Manager, Owner or Architect, including but not limited to scheduling and coordination of the Work; the Architect's preparation of Drawings and Specifications; the Architect's review of shop drawings and requests for instruction(s); or on account of any delay, obstruction or hindrance for any other cause whatsoever by the Owner, Construction Manager, Architect or any other Contractor on the project whether or not foreseeable or anticipated. The Contractor agrees that no monetary recovery may be obtained by the Contractor for any of the foregoing against the Owner, Construction Manager or the Architect based upon any reason, and it is emphasized that the Contractor's sole remedy for any of the foregoing shall be an extension of time, if appropriate.

### § 15.2 Initial Decision

§ 15.2.1 Claims by the Contractor, 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, (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, or (6) submit a schedule to the parties indicating when the Architect expects to take action.

§ 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 and, if the parties fail to resolve their dispute through mediation, to litigation.

§ 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.

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

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

### § 15.3 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. 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.

§ 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 Litigation

§ 15.4.1 Claims that have not been satisfactorily resolved by other means shall be subject to litigation in accordance with law. The Contractor shall comply with any applicable statutory requirements regarding Notice of Claim and with

any applicable Statute of Limitations provisions. In the event the Contractor serves a Notice of Claim to the Owner, the Owner may, as a condition precedent to litigation, require the Contractor to submit to an examination under oath by an attorney or other representative of the Owner, and to provide documentary evidence reasonably requested in connection with the examination. The venue of any litigation shall be New York State Supreme Court in the county in which the Project is located. The prevailing party of the litigation shall be entitled to reasonable attorneys' fees and necessary disbursements.



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# Additions and Deletions Report for AIA<sup>®</sup> Document A232<sup>®</sup> – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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## PAGE 1

Alterations to MS/HS & New Varsity Baseball/Softball Dugouts/Storage  
Port Jervis City School District  
9 Thompson Street  
Port Jervis, New York 12771

...

Savin Engineers  
3 Campus Drive  
Pleasantville, New York 10570

...

Port Jervis City School District  
9 Thompson Street  
Port Jervis, New York 12771

...

*(Name, legal status, and address)*

Bernier, Carr & Associates Engineers, Architects, and Land Surveyors, P.C.  
798 Cascadilla Street  
Suite C  
Ithaca, New York 14850

## PAGE 3

**§ 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, include the Notice to Bidders, Information to Bidders, Form of Proposals, General Conditions, Specifications, Drawings, Addenda issued prior to execution of the Contract, other documents~~ Agreement between Owner and Contractor ("Agreement"), 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 or negotiated after receipt of bids or execution of the Agreement, and when required by Governmental Agencies or Departments, appropriately inserted Certifications, Regulations, and Wage Rate Schedules.

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract or Agreement 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, the Architect as a representative of the Owner, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect-Architect, as a representative of the Owner, shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

Subcontractors shall assume the same obligations to the Contractors as the Contractor has to the Owner and the Architect under General Conditions AIA A232-2019 relationships and responsibilities of the Contractor to the Owner or Architect as defined in General Conditions AIA A232-2019 shall become those of the Subcontractor to the Contractor.

**§ 1.1.2.1** Where the term "Agreement", "Contract" or "Prime Contract" is used in the General Conditions, Supplementary General Conditions, and other Contract Documents, it shall mean the separate Owner-Contractor Agreement between the Owner and each individual Prime Contractor identified in Conditions of the Contract (General, Supplementary and other conditions)."

**PAGE 4**

**§ 1.1.11 Miscellaneous Definitions:**

- .1 The term "Addendum/Addenda" shall mean Changes to the Contract Documents prior to the receipt of bids which are made part of the Agreement.
- .2 The term "Herein" shall mean the contents of the Contract Documents and/or the contents of the particular section where this term appears.
- .3 The term "Indicated" as used herein shall mean shown on the Drawings or described in the Contract Documents. Terms such as "Shown", "Noted", "Scheduled" and "Specified" have the same meaning as "As Indicated".
- .4 The term "Concealed" as used herein shall mean items hidden from sight in such locations as trenches, chases, shafts, furred spaces, walls, slabs, above ceilings and in crawl spaces or service tunnels.
- .5 The term "Exposed" as used herein shall mean not "concealed" as defined herein and the spaces behind normally closed doors such as interiors of cabinets.
- .6 The term "Product" as used herein shall include materials, systems and/or equipment.
- .7 The term "Furnish" as used herein shall mean furnish and deliver to the job site all products necessary that are connected with the Work including unloading, handling, transporting, unwrapping, and inspecting those products to be installed.
- .8 The term "Install" as used herein shall mean furnish all labor and perform all operations connected with assembly, erection, anchoring, installation of products or Work, curing, finishing, cleaning and similar operations including supplying all necessary tools, rigging and equipment to do the Work, and connect up, test, place in operation and service such products.
- .9 The term "Provide" as used herein shall mean furnish and install, without limitation, all labor, products, materials, equipment, transportation, services, etc., required to install, complete the Work, and/or to test and place in operation/service.
- .10 The term "Modifications" shall mean changes to the Contract Documents subsequent to the commencement of the work.
- .11 The term "Piping" as used herein shall mean pipe, rigid conduit, fittings, valves, hangers, and other accessories, which comprise a system.
- .12 The terms "proper", "satisfactory", "workmanlike" and words of similarly implied interpretation, judgment, or opinion, shall be understood to mean "in the opinion of the Architect".
- .13 As used herein, the terms "General Contractor", "GC" and "General Construction Contractor" have the same meaning.
- .14 As used herein, the terms "Mechanical Contractor" and "MC" shall mean the same thing.
- .15 As used herein, the terms "Plumbing Contractor" and "PC" shall mean the same thing.

- .16 As used herein, the terms "Electrical Contractor" and "EC" shall mean the same thing.
- .17 As used herein, the terms "Site Contractor" and "SC" shall mean the same thing.
- .18 As used herein, the terms "Roof Contractor" and "RC" shall mean the same thing.
- .19 As used herein, the terms "Asbestos Abatement Contractor" and "AAC" shall mean the same thing.
- .20 The term "project site" shall mean the space available to contractors at location of the project either exclusively or to be shared with other contractors for performance of Work.
- .21 The term "minimum requirements" shall mean indicated requirements are for a specific minimum acceptable level of quality/quantity, as recognized in the industry. Actual Work shall comply (within specified tolerances) or may exceed minimums within reasonable limits. Refer uncertainties to Architect before proceeding.
- .22 The term "basis of design" shall mean the material, product or manufacturer shown in the Contract Documents was selected to establish the minimum quality, performance and/or operation of the material or product.
- .23 The term "labeled" refers to classification by an approved Standards Agency.
- .24 As used herein, the term "Architect" shall also mean "Engineer" so duly licensed to "provide consulting services under a New York State License" and under Contract to provide professional services to the Owner."
- .25 The term "Warranty" shall mean a formal promise (guarantee) in writing that the contractor shall repair or replace a faulty product, material, or installation within the prescribed warranty period after Substantial Completion.
- .26 The term "General Conditions" shall mean the General Conditions of the Construction Contract, Construction Manager as Advisor Edition (AIA Document AIA A232-2019 Edition).

**§ 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~~ intended results.

**PAGE 5**

**§ 1.2.4** In the event of conflict or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 Contract (Agreement).
- .2 Modifications.
- .3 Addenda, with those of later date having precedence over those of earlier date.
- .4 Instructions to Bidders.
- .5 General Conditions of the Contract for Construction, Construction Manager as Advisor Edition.
- .6 Division 01 of the specifications.
- .7 Divisions 02 thru 49 of the specifications and drawings.
- .8 Other documents specifically enumerated in the Contract as part of the Contract Documents.

In the case of conflict or discrepancies between drawings and Divisions 02 thru 49 of the specifications or within or among the Contract Documents and not clarified by addendum, the Architect will determine which takes precedence.

**§ 1.2.5** Scaling Drawings for dimensions, if done, is done at the Contractor's own risk. All dimensions shown on the Drawings are subject to verification of actual dimensions by the Contractor. It is the responsibility of the Contractor to verify all dimensions in the field to insure proper and accurate fit of materials and items to be installed. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify all existing conditions and measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any differences which may be found shall be submitted to the Construction Manager and Architect for resolution before proceeding with the Work."

**§ 1.2.6** Where items are specified by the use of a reference standard not bound in the specifications, the date of the reference standard shall be the latest edition as outlined in the Building Codes of New York State and/or except as specifically indicated otherwise.

**PAGE 6**

§1.4.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be as outlined under § 1.2.4.

§ 1.4.2 In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall: (1) provide the better quality or greater quantity of Work, (2) comply with the more stringent requirement, or (3) either or both in accordance with the Architect's interpretation. The terms and conditions of this § 1.4.2, however, shall not relieve the Contractor of any of the obligations set forth in § 3.2 and § 3.7.

§1.4.2.1 On the Drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small-scale drawings. Scaling Drawings for dimensions, if done, is done at the Contractor's own risk.

§1.4.2.2 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 will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference, which may be found, shall be submitted to the Architect for resolution before proceeding with the Work.

§1.4.2.3 If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for review by the Architect before initiating the change.

§ 1.4.3 The terms "knowledge", "recognize" and "discover", their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill and diligence required by the Contract Documents. 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 the care, skill and diligence required of the Contractor by the Contract Documents.

§ 1.4.4 The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts or omissions, which causes the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

§ 1.4.5 In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Architect shall be the sole and final interpreter and will issue a written decision to the Owner and the Contractor within a reasonable time of written notification. The Architect's decision shall be conclusive and final.

## PAGE 7

§ 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.

...

§ 2.2.2 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. 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.

§ 2.2.4 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.

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Owner shall make available for inspection, upon request, that field survey or testing information of existing conditions, which is known to be available, and which is held by the Owner at their offices. Such records are not Contract Documents and the Owner makes no representation as to their accuracy or completeness.

**PAGE 8**

§ 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 reasonable 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 ~~may~~ furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall ~~may~~ 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: each Prime Contractor the following:

- .1 Copies for Construction: The Prime Contractors will each be furnished without charge up to two (2) sets of Contract Drawings, Project Manuals and Bid Addendums for use during construction for their own use and the use of their Subcontractors.
- .2 Owner shall furnish additional sets upon a Contractor's written request. Such additional sets will be provided at the cost of printing, postage and handling. Partial sets will NOT be provided.
- .3 Subcontractors and other entities desiring copies of Drawings and other contract Documents shall obtain them from the respective Prime Contractor.

§ 2.3.9 The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, the Contractors' means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws or regulations applicable to the

furnishing or performance of the Work. Owner will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to 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 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.1 In the event Contractor fails, refuses or neglects to perform closeout obligations, including without limitation performance of incomplete items as attached to the Certificate of Substantial Completion, within forty-five (45) days following the date of Substantial Completion or time frame mutually agreed upon between Owner and Prime Contractor, the Owner may, without further notice (except to inform the Contractor its attempt to cure is inadequate) and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from Payments then or thereafter due to Contractor the cost of correcting such deficiencies. Contractor shall be liable to the Owner for any additional costs, including without limitation, those charged by Architect, Attorneys, or others attributable to such failure, refusal, or neglect.

#### **§ 2.6 Owner's Rights for Use of Premises**

§ 2.6.1 Whether Work of various Contractors is or is not partially or fully completed, the premises (site and buildings) are the property of the Owner who shall have certain rights and privileges in connection with use of same.

§ 2.6.2 In such event, Contractor whose unfinished Work is performed subsequently shall be responsible for the prevention of any damage to such Owner's installation. Such use or occupancy by the Owner shall in no instance constitute acceptance of any of the Work.

**PAGE 9**

§ 3.1.1.1 Where the words "Contractor", "Prime Contractor", or any reference to "each Contractor" occurs in the Contract Documents, they shall mean the person, firms or organization having a Contract for the Work as set forth in the Agreement.

§ 3.1.1.2 The Contractor represents to the Owner that it possesses the skill, experience, and resources to perform the Work competently and diligently in an orderly and safe fashion and in accordance with the anticipated milestone and/or completion date(s) as applicable.

**PAGE 10**

§ 3.2.2.1 The Contractor shall promptly notify the Construction Manager and Architect, in writing, of any inconsistencies or errors to provide the Architect ample time for observation, investigation, detail drawings, etc.

§ 3.2.2.2 All Contractors submitting bid proposals shall be presumed to have examined the site to consider fully all conditions, which may have a bearing on the Work, and to have accounted for these conditions in their bid proposals.

§ 3.2.2.3 When required, off-site storage is the responsibility of the Contractor.

§ 3.2.2.4 The exactness of grades, elevations, dimensions, or locations indicated on the Drawings of Work installed by others is not guaranteed by the Construction Manager, Architect, or the Owner.

§ 3.2.2.5 Except as to any reported errors, inconsistencies and to concealed or unknown conditions referred to in § 3.7.4, by executing the Agreement, the Contractor represents the following:

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

§ 3.2.2.6 The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations indicated on the Drawings. Where the Work of this Contract connects or interfaces with existing or other Work, Contractor shall verify at the site all conditions of such existing or other Work. Any errors due to the Contractor's failure to verify such information shall be promptly remedied by the Contractor at no additional cost to the Owner.

§ 3.2.2.7 Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify all existing conditions and measurements. Any differences, which may be found, between actual measurements and dimensions indicated on the Drawings shall be submitted to the Architect for resolution before proceeding with the Work. No extra compensation will be allowed for such discrepancies.

§ 3.2.3 ~~The Contractor is not required to ascertain that the Contract Documents are in accordance with~~ 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, 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 and lawful orders of public authorities.

§ 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.

PAGE 11

§ 3.3.1.1 Laying out the work:

- .1 Each Contractor shall carefully lay out its Work in accordance with the Contract Documents and shall coordinate its Work with existing and new Work and it shall verify all lines and levels indicated in the Contract Documents that affect its Work.

- .2 Adjustments required to suit field conditions shall be made only after the Construction Manager's and Architect's review. Each Contractor shall be responsible for the accuracy of layout and shall correct at its own expense any Work that his forces have laid out incorrectly.
- .3 Where equipment lines or piping and/or conduit are shown diagrammatically, the Contractor shall be responsible for the coordination and orderly arrangement of the various lines of piping and conduit included in the Work of its Contract. Contractor shall coordinate its work and prevent all interferences between equipment, lines of piping, architectural features, and avoid any unsightly arrangements in the exposed areas.

...

**§ 3.3.4 Shutdowns:** Such Work as connections to existing sewers, plumbing, heating, and electric systems, shall be done at a time agreeable to the Owner and Construction Manager and shall be determined and agreed to well in advance of the actual doing of such Work so as to interfere as little as possible with the operation and use of existing facilities. Shutdowns must be coordinated through the Construction Manager 48 hours prior to shut down. The continued uninterrupted operation of all facilities is essential. If any existing facilities must be interrupted, the Contractor for the Work shall provide all necessary temporary facilities and connections necessary for maintaining existing facilities. No mechanical, heating, plumbing, sprinkler, or electric services shall be interrupted at any time, except as approved in advance by the Owner. All communication systems must be maintained without interruption. As much related work as possible shall be performed prior to shut-downs, so as to minimize the period of shut-down. All material and manpower to do the work involved shall be at the job prior to interruption of services.

**§ 3.3.5** If the Work involves a School facility, the Contractor represents that it is familiar with and shall adhere to the "Uniform Standards for School Construction and Maintenance Projects" set forth at 8 New York Code of Rules and Regulations §155.5 (8 NYCRR 155).

## PAGE 12

**§ 3.4.4 Equivalent Products:** Except as otherwise specified, whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturer's or vendors' names, catalog numbers, or the like, it is so identified for the purpose of establishing a standard, and any material, article, or piece of equipment of other manufacturers or vendors which will perform adequately the duties imposed by the general design may be considered equally acceptable provided the material, article, or piece of equipment so proposed is, in the opinion of the Architect, of equal substance, appearance, size, function and performance. Such proposed product shall not be purchased or installed until approved by the Architect.

- .1 The Owner and the Architect will consider a formal request for the substitution of a product in place of the one specified only under the conditions set forth in the General Requirements (Contract, & General Conditions) on "EQUIVALENCY", of the Specifications) for each proposed substitution.
- .2 The Architect will be allowed ten (10) business days to evaluate each proposed substitution. The Architect will be the sole judge of equivalence, and no substitution shall be ordered, installed or utilized without the Architect's review process having been completed and the product accepted by written notification.
- .3 Owner may require Contractor to furnish at the Contractor's expense a special performance warranty or other surety with respect to any substitution.
- .4 The Architect will record time required by the Architect and the Architect's consultants in evaluating substitutions proposed by the Contractor and in making changes in the Contract Documents occasioned thereby. Whether or not the Architect accepts a proposed substitution, Contractor shall reimburse the Owner for the charges of the Architect and the Architect's Consultants for evaluating each proposed substitution. In the event Owner is not obligated to pay Architect for such costs incurred by the Architect in evaluating proposed Substitutions as Additional Services. Contractor shall pay Architect's additional cost for such evaluation directly to Architect as a third-party beneficiary under this Contract.
- .5 Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.
- .6 Reasons the substitution is advantageous and/or necessary, including the benefits to the Owner and Work in the event substitution is acceptable.

- .7 The adjustment, if any, in the Contract Sum in the event the substitution is acceptable.
- .8 The adjustment, if any, in the time of completion of the contract and the construction schedule in the event the submission is acceptable.
- .9 Contractor shall demonstrate that the proposed substitution conforms and meets all the requirements of the pertinent Specifications and the Drawings; and the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted to the Architect. Architect will review and make an informed decisions on proposed substitution within ten (10) business days.
- .10 Substitutions and alternates may be rejected with or without written explanation.
- .11 No substitute material shall be purchased or installed by the Contractor without the Architect's written approval. Material that, in the Architect's opinion, is inferior to that specified or is unsuited for the intended use will be rejected. The Architect's decision regarding acceptance of equals shall be final. The risk of whether a proposed substitution will be accepted is borne by the Contractor. No requests for substitution will be considered unless the Architect determines that such substitution is in the best interest of the Owner under the conditions set forth in the Contract Documents.
- .12 By making requests for substitutions the Contractor:
- a. Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
  - b. Represents that the Contractor will provide the same warranty for the substitution that the Contractor would provide for the specified product;
  - c. Certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;
  - d. Will coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete in all respects; and,
  - e. Will reimburse Owner for additional costs from claims by other Prime Contractors resulting from incorporation of the requested substitution.
- .13 If the Project involves Public Work subject to N.Y. General Municipal Law §103, whenever a material, article, device, piece of equipment or type of construction is identified on the Drawings or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, or similar specific information, it is so identified for the purpose of establishing a standard of quality, and such identification shall not be construed as limiting competition. In such event, any material, article, device, piece of equipment or type of construction of other manufacturers or vendors that will perform the duties imposed by the general design will be considered equally acceptable provided the material, article, device, piece of equipment or type of construction so proposed is completely described in submittals as set forth herein and is, in the opinion of the Architect, of equal substance, appearance, and function.
- .14 The burden of proof to show equivalency or equal quality shall be that of the Contractor. Submissions for this purpose shall follow the format for Submittals. Submissions shall be complete, informative & address all data required in the base bid specification in such a manner that the Architect can, without unusual effort or exhaustive research, review and make a judgment as to its equivalency. Excessive or unusual effort required of the Architect by the Contractor to review, research and qualify items proposed as equivalents shall be charged to the Contractor at the current billing rate of the Architect.
- .15 Proposed equivalents or substitutions will not be considered unless requested as set forth herein. Mere express or implied indication of equivalents or substitutions will not be considered without full compliance these requirements.
- .16 The Contractor shall indicate the kind, type, brand or manufacturer that is to be substituted for the specified item. The Contractor will submit information describing in specific detail the differences in quality, performance, cost and time between the substitution and the item that was specified. This information shall include notification of possible changes to the Work or to work of other contracts."

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

**§ 3.4.6** Contractor shall be responsible for the care and protection of all equipment and materials for his work of this project, including equipment and material furnished by the Owner.

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

PAGE 13

§ 3.5.1.1 Neither final payment, nor provision in Contract Documents, nor partial or entire occupancy of premises by Owner shall constitute an acceptance of Work not done in accordance with Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship.

§ 3.5.1.2 In emergencies occurring during the warantee period, the Owner may correct any defect immediately and charge the cost to the Contractor. The Owner shall at once notify the Contactor, who may take over the Work and make any corrections remaining after his forces arrive at the Work. Any repair work not started within seven (7) days following notice to the Contractor of any defect shall be considered an emergency.

PAGE 14

~~The~~ Except as otherwise specified, the Contractor shall pay 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.

§ 3.6.1 The OWNER is exempt from the payment of Sales and Compensating Use Taxes of the State of New York and of cities and counties, on all materials, equipment and supplies to be sold to the OWNER pursuant to this Contract. The exemption does not, however, apply to tools, machinery, equipment, or other property leased by or to the contractor or to a Sub-Contractor and the Contractor and its Sub-Contractor. Also exempt from such taxes are purchases by the CONTRACTOR and its subcontractors of materials, equipment and supplies to be sold to the OWNER pursuant to its Contract, including tangible personal property to be incorporated in any structure, building or other real property forming part of the Project." The exemption does not, however, apply to tools, machinery, equipment, or other property leased by or to the CONTRACTOR or a Sub-Contractor and the CONTRACTOR and its Sub-Contractor shall be responsible for any pay, any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property, and for materials not incorporated into the project.

~~§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Each Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for all required permits, governmental fees, licenses, certificates of inspection, of occupancy, of Underwriters, and of all other required certificates for the Work, necessary for the proper execution and completion of the Work that Work, which are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded, which are legally required at the time the bids are received. Each Contractor shall be responsible for complying with any and all requirements specified with each Permit.~~

...

**§ 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 or affected work is performed and in no event later than ~~14-7~~ 7 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.

PAGE 15

- .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.
- .4 Value of allowances shall also include:
  - All costs for plant, equipment and labor for unloading, handling and storage at the site;
  - Any costs for protection;
  - All costs for associated demolition work;
  - Costs for removal and off-site disposal of demolished materials;
  - Cost for labor, materials and equipment for installation and finishing, except where labor is specified not to be a part of the allowance.
  - Other expenses required to complete the installation.

...

§ 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. Prior to starting the work, the Contractor shall designate the 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 as binding as if given to the Contractor. 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.

...

§ 3.9.4 The Contractor shall not reduce or terminate supervision of the Work.

§ 3.9.5 If, for any reason, the Contractor takes an action resulting in any of the changes noted in § 3.9, which negatively affects the projects progress or quality, or resulting in additional work by the Owner or their agents, the Owner has the right to charge the Contractor all costs associated with these efforts including the costs of legal, Construction Management Services, and Architectural services. The Owner shall notify the Contractor in writing of their intent to back charge as a result of lack of supervision.

§ 3.9.6 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.

§ 3.9.7 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.

§ 3.9.8 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.

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

§ 3.9.10 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.

§ 3.9.11 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.

#### PAGE 16

§ 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.

#### PAGE 17

§ 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.

## **PAGE 18**

§ 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.

**PAGE 19**

§ 3.12.5.1 No extension of time will be granted to the Contractor because of failure to have shop drawings, product data, and samples submitted in ample time to allow for review by the Construction Manager, Architect or their Consultants.

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

**PAGE 20**

§ 3.12.10.2.1 If it is the position of the Contractor, or his licensed design professional, that the Owner and Architect have not provided all performance and design criteria, the Contractor shall request additional criteria in writing before proceeding with the professional services described in § 3.12.10. Proceeding with the professional services shall be evidence that the Owner and Architect have provided all necessary performance and design criteria.

§ 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.

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§ 3.13.1.1 Use of site and building:

- .1 Each Prime Contractor shall cooperate with the Owner in making available for the Owner's use, areas of the completed or partially completed building(s) or site as provided for in Article 9, Paragraph 9.9. The Owner shall have the right to take possession of and to use any completed or partially completed portions of the building or site even though the time of completing the entire Work or such portion of the Work may not have expired. Such use shall not constitute acceptance thereof. Such occupancy shall in no way abrogate any specified warranties or guaranties for materials, workmanship or operation of equipment pertaining to the occupied portions.
- .2 Each Prime Contractor shall cooperate with the Owner in making available for the Owner's use such building services as heating, ventilating, cooling, water, lighting and telephone for the space or spaces to be occupied, and if the equipment required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid space or spaces, the Contractor shall make every reasonable effort to complete such part of his Work as soon as possible to the extent that the necessary equipment can be put into operation and use.
- .3 Mutually acceptable arrangements shall be made as to the warranties or guaranties affecting all Work associated therewith.
- .4 Such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. (See 11.3.1.5) Such occupancy shall be documented with an appropriately executed Certificate of Substantial Completion.
- .5 See Article 2, Paragraph 2.5 for special situations.

§ 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.

### **§ 3.13.3 Protection of Building Occupants**

§ 3.13.3.1 Owner or Tenant occupied areas of the building shall always comply with the minimum requirements necessary to maintain a Certificate of Occupancy.

§ 3.13.3.2 General safety and security standards for this project include:

- .1 All construction materials shall be stored in a safe and secure manner;
- .2 Fences shall be maintained around construction supplies or debris.
- .3 Gates in temporary fences shall always be locked unless a worker is in attendance to prevent unauthorized entry to the Contract areas.

- .4 During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.
- .5 Workers shall wear photo-identification badges at all times for identification and security purposes.
- .6 Separation of Construction Areas: Construction areas that are under the control of a Contractor and therefore not occupied by Owner or Tenants shall be separated from occupied areas. Provisions shall be made to prevent the passage of dust and contaminants into occupied parts of the building. Periodic inspection and repairs of the contaminant barriers must be made to prevent exposure to dust or contaminants. Each Contractor working inside the buildings shall temporarily seal doorways enclosing their work area, using heavy duty plastic, duct tape, etc. Repairs of the plastic and tape must be made in the event the tape becomes loose or the plastic is cut or torn.
- .7 Type "X" Gypsum Board shall be used in exit ways or other areas that require fire rated separation.
- .8 Plastic sheeting may be used only as a vapor, fine dust, or air infiltration barrier, and shall not be used to separate occupied spaces from construction areas.
- .9 A specific stairwell and/or elevator should be assigned for construction worker use during work hours. In general, workers may not use corridors, stairs, or elevators designated for Owner or Tenants.
- .10 Large amounts of debris must be removed by using enclosed chutes or a similar sealed system. There shall be no movement of debris through halls of occupied spaces of the building. No material shall be dropped or thrown outside the walls of the building.
- .11 All parts of the building affected by renovation activity shall be cleaned at the close of each workday, including but not limited to cleaning and disinfection in connection with infectious disease exposure precautions, whether permanent or temporary, required or suggested by federal, state or local governmental authorities.
- .12 Fire and hazard prevention: Areas of buildings under construction that are to remain occupied shall maintain a Certificate of Occupancy.

**§ 3.13.3.3 Noise Abatement During Construction:**

- .1 Construction and maintenance operations shall not produce noise in excess of 60 dba in occupied spaces or shall be scheduled for times when the building is not occupied, or acoustical abatement measures shall be taken.

**§ 3.13.3.4 Control of airborne contaminants during construction:**

- .1 The Contractor shall be responsible for the control of the chemical fumes, gases, and other contaminants produced by their welding, gasoline or diesel engines, roofing, paving, painting, etc. to ensure they do not enter occupied portions of the building or air intakes.
- .2 The Contractor shall be responsible to ensure that its activities and materials which result in off-gassing of volatile organic compounds such as glues, paints, furniture, carpeting, wall covering, drapery, etc. are scheduled, cured, or ventilated in accordance with manufacturer's recommendations before a space can be occupied.
- .3 Large and small asbestos abatement projects as defined by 12NYCRR56 shall not be performed in occupied areas of the building. Any area of the building where abatement of hazardous materials is being performed must be sealed off in an air-tight fashion from the remainder of the building in accordance with NY Code Rule 56 and other applicable laws and regulations.
- .4 The requirements of Section 155 of the Regulations of the New York State Commissioner of Education apply to this Project. Reference Section 01 3529.1 Life Safety Requirements During School Construction and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 8 Education Department, Chapter II Regulations of the Commissioner, Subchapter J. Buildings and Transportation Part 155 Education Facilities.

**§ 3.13.4** Each Contractor shall be responsible for complying with Occupational Safety and Health Administration (OSHA) and U.S. Department of Health and Human Services' Center for Disease Control and Prevention (CDC) on COVID-19 Guidance for safe work practices, use of personal protective equipment (PPE), social distancing, cleaning, and sanitizing of the worksite. These protocols shall be incorporated into each Contractor's safety work plan.

**§ 3.13.5** All construction workers and suppliers are to execute a Health Declaration Form/Questionnaire each day prior to gaining access to one of the construction sites during the COVID-19 crisis.

§ 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. In order to eliminate cutting and patching as much as possible, each Prime Contractor shall coordinate the installation of sleeves and inserts with the other Prime Contractors affected and shall give proper and detailed instructions to others where Work may be affected by their Work, with adequate notice prior to the erection of new Work. Cutting and patching Work as required to install new Work or remove existing Work shall be done carefully and neatly with as little damage as possible.

§ 3.14.3 Unless otherwise stated in Specification Section 01 7329 Cutting and Patching, each Prime Contractor shall perform all cutting and patching as required to complete their Work. Cutting is to be done neatly with minimal damage to surrounding materials and holes to be patched and/or fire safe as required to the satisfaction of the Construction Manager, Architect and Owner.

§ 3.14.4 Any costs caused by defective or ill-timed Work shall be borne by the Contractor responsible, therefore. Any Contractor who is required to cut and patch its new Work to provide conditions for other contractors to complete their new Work and who was not given adequate prior notice of the conditions required for completion of such Work before doing its Work, shall charge the Contractor in default the documented cost of the cutting and patching Work plus 15% for overhead and profit unless otherwise specified.

§ 3.14.5 Cutting and patching of any Work shall be made in such a manner as to not breach any provisions of any guarantee or warranty on existing Work left in place or guarantee or warranty required for his new Work. Patching of Work shall match existing adjacent surfaces and patch work shall be disguised completely to hide any trace of patching.

§ 3.14.6 Refer to Contract (General, Supplementary and other conditions) Section 01 7329 Cutting and Patching for more information.

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§ 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.

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 Each Prime Contractor is solely responsible for clean-up to the Construction Manager's and Owner's satisfaction. Further, each Contractor shall fully cooperate with all other Contractors in the coordinated effort to meet the Owner's time and quality requirements for clean-up.

**§ 3.15.4 Final Cleaning**

- A. General: General cleaning during construction is required by the General Conditions and included in Division 01.
- 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.

**PAGE 25**

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and Architect, and the Construction Manager, and each of their consultant's, officers, board members, agents, and employees, from and against any suits, claims, damages, losses, or expenses, including but not limited to attorneys' fees, fees and litigation costs, 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), including suits, claims, damages, losses or expenses attributable to any bodily injury, sickness, disease, or death, or injury to or destruction of any tangible property, including loss of use resulting therefrom, or any statutory violations, but only to the extent caused by the negligent acts or omissions of the Contractor, a in whole or in part by the act, omission, fault, or statutory violation of the Contractor, a subcontractor, or any person or entity directly or indirectly employed by them, or any person or entity for whose acts they may be liable 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 they any of the above may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.any of them has been negligent. This provision shall not be construed to require the Contractor to indemnify the Owner, Architect or Construction Manager for the negligence of the Owner, Architect or Construction Manager, respectively, to the extent such negligence, in whole or in part, proximately caused the damages resulting in the suit, claim, damage, loss or expense.

**PAGE 26**

§ 3.18.3 In any and all Claims against the Owner, Construction Manager, or the Architect or their agents or employees by third parties, the indemnification obligation under § 3.18 shall apply and shall not be limited by limitation or amount of or type of damages, compensation, or benefits payable by or for the Contractor or Subcontractors.

§ 3.18.4 Contractor shall comply with, and cooperate with, Construction Manager, Architect and Owner in complying with legal requirements. Among other things, Contractor shall be responsible for performing corrective Work within any abatement periods prescribed by governmental entities including but not limited to OSHA, appealing from decisions or orders, requesting extensions on abatement periods, and furnishing such information or evidentiary material as may be necessary or as may be requested by Construction Manager, Architect or Owner to fully protect the rights and interests of Owner, Construction Manager, and Architect with respect to possible, threatened or pending proceedings or orders.

### **§ 3.19 Contractor's Responsibilities**

**§ 3.19** Contractor agrees, in addition to all other responsibilities and duties under the Contract:

**§ 3.19.1** To use all necessary means to discover and to notify the Construction Manager, Architect and Owner in writing of any defect in other Work upon which the satisfactory performance of the Work may depend, and to allow a reasonable amount of time for remedying such defects. If Contractor should proceed with the Work, Contractor shall be considered to have accepted and be responsible for such other Work unless over Contractor's written objection, Contractor shall have proceeded pursuant to written instructions from the Architect.

**§ 3.19.2** To submit to Owner, Construction Manager, and Architect promptly upon request, information with respect to the names, responsibilities and titles of the principal members of Contractor's staff.

**§ 3.19.3** To take all steps necessary to avoid labor disputes; and to be responsible for any delays and damages to Owner caused by such disputes.

**§ 3.19.4** To pay for costs of repair to other Work attributable, in whole or in part, to the fault or negligence of Contractor and Owner's charges for removal of rubbish attributed to Contractor, and any clean-up related to Contractor or the Work, as determined by Owner or Construction Manager.

**§ 3.19.5** To comply with all legal requirements; to appear at hearings, proceedings or in court in respect of such compliance or in respect of violations or claimed violations of legal requirements; to pay any fines or penalties imposed for said violations; and to pay all legal fees, fines and penalties incurred by or imposed upon Owner relating to Contractor's compliance, violations or claimed violations. Without limiting the foregoing, Contractor shall appear at hearings, proceedings and/or in court and consent to its substitution as a party defendant in respect of all summonses and claimed violations arising out of or relating to the Work.

**§ 3.19.6** Not to display on or about the Project site any sign, trademark or other advertisement without written consent of the Owner.

**§ 3.19.7** Each Contractor's Subcontractor and supplier shall be bound by all Contract Documents to the same extent and with the same effect as if the Subcontractor or supplier were the Contractor. Contractor shall cause Subcontractors and suppliers to comply with all the Contract Documents. Contractor shall be responsible for all the acts, work, material and equipment of its Subcontractors and supplier and all persons either directly or indirectly employed by any of them.

**§ 3.19.8** To:

- .1** Furnish a competent and adequate staff and use its best skill and attention for the proper administration, coordination, supervision, and superintendence of the Work;
- .2** Organize the procurement of all materials and equipment so that they will be available at the time needed for the Work;
- .3** Keep an adequate force of skilled workers on the job to complete the Work in strict accordance with all requirements of the Contract Documents;
- .4** Maintain throughout the duration of the Work a competent superintendent and any necessary assistants, all of whom shall be acceptable to Owner and shall not be changed without the consent of the Owner;
- .5** Enforce discipline and order and not to employ at the Project any unfit person or anyone not skilled in the task assigned; and
- .6** Provide supervision by experts in all aspects of the application of the materials, equipment or system being fabricated and installed.

**§ 3.19.9** That if any Work is performed which is contrary to legal requirements, to promptly make all changes as required and take all other corrective action to comply therewith and pay all costs arising there from.

**§ 3.19.10** That any review or consideration by Owner, Construction Manager, or Architect of any method of construction, invention, appliance, process, article, device or material of any kind shall be for its general adequacy for the Work and shall not be an approval for the use thereof by Contractor in violation of any patent or other rights of any third person. Owner and Architect shall in no event be deemed to have reviewed or to have been required to review or consider the means and methods of construction, all of which are chosen exclusively by the Contractor.

**§ 3.19.11** That if any provision of the Contract Documents conflicts with any agreement among members of trade associations, or with a union or labor council which regulates the work to be performed by a particular trade, to reconcile such conflict without delay or damage to Owner. In the event the progress of the Work is delayed by such conflict, Architect may require that other material or equipment of equal or better kind and quality be provided at no additional cost to Owner. This right of substitution shall not limit other rights that the Owner may have concerning such delay.

**§3.19.12** In accordance with local or NY State Laws and Regulations, the Contractor, including any of its employees, subcontractors, suppliers or materialmen or other representatives, shall not use tobacco in any form on the premises during the course of the Work. Contractors failing to abide by this requirement shall be prohibited from working at the site and shall be responsible for any consequent delays or added costs to the Owner as a result of such noncompliance.

**§ 3.19.13** The Contractor shall provide reasonable and visible identification for each employee, Subcontractor, or other person at the Project site, and shall, upon request of the Owner, make available a list of names of those employees, Subcontractors or others working under the direction of the Contractor at the Project site. Any such identification shall be reasonably visible to the Construction Manager, Architect and to Owner's or Tenants' personnel at all times to allow the Owner to maintain the safety and security of buildings, property, and persons at the Project site. Contractors failing to abide by this requirement are different from those as indicated.

**§ 3.19.14** The Contractor, its employees and Subcontractors and their employees shall be subject to and abide by rules and regulations established by the Owner. No weapons of any kind shall be permitted on-site; there shall be no harassment of a sexual, ethnic, or religious nature; there shall be no use of profanity.

### **§ 3.20 Local Conditions, Existing Features and Underground Data**

**§ 3.20.1** The Contractor acknowledges it has satisfied itself as to the nature and location of the Work, the general and local conditions, particularly those bearing on transportation, disposal, handling and storage of materials, availability of labor, materials, equipment, utilities, roads, weather, ground water table, character of surface and subsurface materials and conditions, the facilities needed to prosecute the Work, and all other factors which in any way affect the Work or the cost thereof under this Contract. Any failure by the Contractor to acquaint itself with the available information concerning these conditions will not relieve it from the responsibility of successfully performing work. See Section § 1.2.2.1.

**§ 3.20.2** The location of existing features shown on plans is intended for general information only. The Contractor is solely responsible for accurate determination of the location of all structures and shall not be entitled to any extra payment due to any unforeseen difficulties or distances encountered in the Work.

**§3.20.3** The locations, depths, and data as to underground conditions have been obtained from records, surface indications and data furnished by others. The information furnished is solely for the convenience of the Contractor without any warranty, expressed or implied as to its accuracy or completeness. To the extent permitted by law, the Contractor shall make no claim against the Owner or Architect or the Construction Manager with respect to the accuracy or completeness of such information if erroneous, or if the conditions found at the time of construction.

### **§ 3.21 Construction Stresses**

**§ 3.21.1** The Contractor shall be solely responsible for the load conditions created during construction. The Contractor shall be responsible for repairing any structure which is dislocated, over strained, or damaged during construction.

**§ 3.21.2** The Contractor is responsible for restoration and/or repair of utilities, property, buildings, pavement, walkways, roads, etc. damaged by its activities.

### **§ 3.22 Training and Instructions**

**§ 3.22.1** Upon Substantial Completion of the Work, the Contractor shall orient and instruct the Owner's designated personnel in the operation and maintenance of all equipment furnished by the Contractor and shall turn over all pertinent literature and operational manuals relating to the equipment. The format for organizing, binding, and delivering such manuals shall be as described in the Specifications.

### **§ 3.23 Daily Records Clause**

§ 3.23.1 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.

§ 3.23.2 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.

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

**PAGE 28**

§ 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.~~ and Architect. Consent shall not be unreasonably withheld.

§ 4.1.4 If the employment of the Architect or Construction Manager is terminated, the Owner shall employ a successor Architect or Construction Manager.

§ 4.1.5 The Architect shall be deemed a third-party beneficiary of the Contract and the General Conditions of the Construction Contract and Supplementary Conditions. As such, where Architect incurs additional costs as a result of actions of the Contractor or any of its Subcontractors and Architect is not entitled to compensations for such costs by Owner as Additional Services, such additional cost shall be paid by the Contractor directly to the Architect as Architect's current rates.

**PAGE 30**

§ 4.2.13 ~~The Construction Manager Architect~~ will prepare Change Orders and Construction Change Directives. ~~The Construction Manager shall review, approve and sign all Project Change Orders and Construction Change Directives in conjunction with the Owner. The Construction Manager will review change order requests, assist in negotiating the change order requests and submit recommendations to the Architect and Owner.~~

**PAGE 31**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work ~~at the site.~~ on the Project. 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.~~ on the Project. 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.

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§ 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.

**PAGE 32**

§ 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.

...

- .3 Any Subcontract over \$5,000.00 shall be in writing.

**PAGE 33**

§ 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.

...

§ 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.~~

**PAGE 34**

§ 7.1.1.1 Construction Change Directive: Architect may issue a document, on AIA Form G714, signed by Owner, instructing Contractor to proceed with a change in the Work, for subsequent inclusion in a Change Order. The

Document shall describe the changes in the Work and designates method of determining any change in Contract Sum or Contract Time.

1. The document will describe the required changes and will designate method of determining any change in Contract Sum or Contract time.
2. Promptly execute the change.

§ 7.1.2.1 Proposal Request: Architect may issue a document which includes a detailed description of a proposed change with supplementary or revised Drawings and specifications. Contractor shall prepare and submit a fixed price quotation within 7 calendar days of receipt of such documents.

§ 7.1.2.2 Submit to the Construction Manager, the Name of the Individual Authorized to receive change documents and who will be responsible for informing others in contractor's employ or subcontractors of changes to the Contract Documents.

§ 7.1.2.3 Contractor may propose a change by submitting a request for change to the Construction Manager, describing the proposed change and its full effect on the Work, with a statement describing the reason for the change, and the effect on the Contract Sum and Contract time with full documentation and a statement describing the effect on Work by separate or other contractors. The Construction Manager Shall Submit to the Architect for review.

§ 7.1.4 Changes in the Work involving additional Work or deletion of Work whether or not resulting in an addition to or subtraction from the Contract Sum shall not be made until the Contractor submits to the Construction Manager the cost of the added or deleted Work with a complete and detailed listing of all Subcontractors involved, all materials, labor and equipment.

§ 7.1.4.1 Overhead and profit as described in § 7.1.7 and § 7.1.7.1 may be added to the cost of a Claim for additional Work *only* when the source of monies for such additional Work is not an Allowance included in the Contract Sum or any other monies for Work included in the Contract Sum.

§ 7.1.4.2 Changes in the Work whether or not involving additions or deductions from the Contract Sum shall not be made until an appropriate Change Order or Change Directive have been issued.

§ 7.1.4.3 ALL CHANGE ORDERS MUST HAVE THE APPROVAL OF THE OWNER AND ARCHITECT IN WRITING.

§ 7.1.5 Actual cost of labor and material shall be defined as the amount paid for the following items, to the extent determined reasonable and necessary:

- .1 Cost of materials delivered to the job site for incorporation into the contract work.
- .2 Wage paid to workers and foreman and wage supplements paid to labor organizations in accordance with current labor agreements.
- .3 Premiums or taxes paid by the Contractor for worker's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law, net of actual and anticipated refunds and rebates. (Not to be included in calculation of overhead and profit.)
- .4 Sales taxes as required by law.
- .5 Allowance for use of construction equipment (exclusive of hand tools and minor equipment), as approved for use by the Architect. The rate on self-owned equipment used for periods of under 1 week will be the Associated Equipment Distributor's published monthly rate divided by 22 days to establish a daily rate and divided again by 8 hours to establish an hourly rate. Equipment used for periods of 5 days or more will be billed at a rate equal to 45 percent of the published monthly rate. In the alternative, the Architect may approve the reimbursement of a rate representing the allocable costs of ownership. Self-owned equipment is defined to include equipment rented from controlled or affiliated companies. Rented equipment will be paid for at the actual rental cost. Gasoline, oil and grease required for operation and maintenance will be paid for at the actual cost. When, in the opinion of the Contractor and as approved by the Architect, suitable equipment is not available on the site, the moving of said equipment to and from the site will be paid for at actual cost.

§ 7.1.6 Overhead shall include insurance other than those incidental to labor mentioned above, premiums on bonds required by the Contractor, Contractor's Supervisory employees, office management, home and field office expenses, transportation costs and both manual and power small tools and manual and power small equipment.

§ 7.1.6.1 For Work done by the Prime Contractor's own forces, mark-up for combined overhead and profit on materials and on cost of labor shall not exceed 15%.

.1 Work authorized under Article §3.8 Allowances are not subject to overhead and profit.

§ 7.1.6.2 For Work done by the Subcontractors, mark-up of costs as defined herein by Subcontractor's for combined overhead and profit on materials and on cost of labor shall not exceed 10%.

.1 To this amount, 5% may be added for the Prime Contractor's combined overhead and profit.

.2 Work authorized under Article §3.8 Allowances are not subject to overhead and profit.

§ 7.1.7 To facilitate reviewing quotations for either extra charges or deductions, all proposals shall be accompanied by a complete itemization of costs including labor, materials, subcontracts, and if allowed, mark-ups for overhead and profit. Subcontracts shall be similarly itemized. In no case will a change involving over \$1,000.00 be approved without itemization.

§ 7.1.7.1 If requested, the Contractor shall submit detailed quotations from material suppliers.

§ 7.1.8 Regardless of the method used to determine the value of any change, the Contractor will be required to submit evidence satisfactory to the Architect to substantiate each and every item that constitutes his proposal of the value of the change. The amounts allowed for overhead and profit shall not exceed the applicable percentages as established in the two (2) following Sections:

§ 7.1.8.1 If the Work is done directly by the Contractor, overhead and profit in the amount of 15% may be added to the cost proposal. The percentages for overhead and profit may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the percentages set forth in the paragraph. Overhead and profit percentages are not to be applied to the premium portion of overtime pay.

§ 7.1.8.2 If the Work is done by a subcontractor, subcontractor's overhead and profit in the amount of 10% may be added to the cost of labor and materials. To this amount, there may be added 5 percent for the Contractor's combined overhead and profit. Overhead and profit percentages are not to be applied to the premium portion of overtime pay.

§ 7.1.9 Whenever the cost of any Work is to be determined pursuant to § 7.1.1 thru § 7.1.8, Contractor will submit in form acceptable to the Construction Manager and Architect an itemized cost breakdown together with supporting data.

§ 7.1.9.1 In computing the value of a change order which involves additions and deductions of work and the added work exceed the omitted work, overhead and profit shall be computed on the amount by which the cost of additional labor and materials exceeds the cost of the omitted labor and material, except no additional overhead and profit shall be allowed on value of work determined in accordance with § 7.1.5.

§ 7.1.9.2 In computing the value of a change order which involves deductions and additions and the Work omitted exceeds the added Work, the Contractor will be allowed to retain the overhead and profit on the amount by which the omitted Work exceeds the added Work, except that no overhead and profit shall be retained on value of work.

§ 7.1.9.3 The Contractor may retain overhead and profit on a change order which involves deductions only, except that no overhead and profit shall be considered on value of Work."

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

**PAGE 36**

§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Construction Manager Architect~~ and signed by the Owner, Contractor, 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.

...

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. Lump sum adjustment shall be substantiated by submitting evidence of actual costs to the Construction Manager and Architect for evaluation;

...

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable ~~fixed or percentage fee; fixed; or~~

...

**§ 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~~ allowance for overhead and profit in accordance with § 7.1.8, § 7.1.8.1, § 7.1.8.2, § 7.1.9, § 7.1.9.1, § 7.1.9.2, § 7.1.9.3, and when permitted by § 7.1.6 and § 7.1.6.1. 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:

**PAGE 37**

- .3 Rental costs of machinery and equipment, exclusive of ~~hand tools, manual and small power tools and manual and small power equipment,~~ 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.~~ consumable supplies.

...

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

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the 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. 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.

**§ 7.3.9** 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. 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.

§ 7.3.10 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.

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### **§ 7.5 Unit Prices**

§ 7.5.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of § 7.1.1.1 through § 7.5.1.4 inclusive).

§ 7.5.1.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Architect in accordance with § 7.5.4.

§ 7.5.1.2 Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

§ 7.5.1.3 Where the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of work and if Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

§ 7.5.1.4 Construction Manager will determine the actual quantities and classifications of unit price work performed by Contractor. Construction Manager and Architect will review with the Contractor, Architect's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Architect's written decisions thereon will be final and binding upon Construction Manager, Owner and Contractor unless, within 10 days after the date of any such decision, either Owner or Contractor delivers to the other party to the Agreement and to Architect written notice of intention to appeal from such a decision.

### **§ 7.6 Alternates**

§ 7.6.1 Where the Work involved is covered by Alternate contained in the Contract Documents, the Owner shall have the right of selection in respect to any or all of the Alternates as Bid. The Contractor shall provide the Owner thirty (30) days' written notice when the doing said work of an Alternate impacts the new Work or the removal of materials/products already installed or the acceptance of the Alternate will increase the Contractor's Contract amount.

### **§ 7.7 Field Orders**

§ 7.7.1 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 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.

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

§ 7.7.3 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.

**PAGE 38**

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. **TIME IS OF THE ESSENCE IN THE COMMENCEMENT, EXECUTION AND CONSTRUCTION OF THE WORK.** Contractor shall be responsible for all direct and consequential damages to Owner, Construction Manager, and Architect arising from any delay of Contractor, its Subcontractors and suppliers, in performing or completing the Work in accordance with the time requirements. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.1.1 Contractor shall cooperate with the Owner, Construction Manager, Architect and other Contractors on the Project, making every reasonable effort to reduce the contract time.

**PAGE 39**

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Contractor shall do all things necessary to ensure the prosecution of the Work in accordance with any one or more of the following as determined by the Construction Manager and the Owner, in their discretion:

- .1 Project schedules and revisions thereof;
- .2 The time requirements for various portions of Work;
- .3 The requirements of the Project including, but not limited to, coordination requirements as may from time to time be known to Contractor;
- .4 Schedules of the Work provided by Contractor to Construction Manager upon the Owner's request.

§ 8.2.4 If the Contractor does not achieve Substantial Completion within the Contract Time established in the Agreement between the Owner and the Contractor, or in a subsequent Change Order, the Contractor shall be liable to the Owner, in addition to any actual or consequential damages, for the costs of reimbursements to the Owner's Agents including, but not limited to, the Construction Manager and Architect for their services attributable to this delay.

§ 8.2.5 Should the progress of the Work and/or other Work be delayed by any fault, neglect, act or failure to act of Contractor or any of its Subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to Owner, Construction Manager, or Architect or for which Owner, Construction Manager, or Architect may become liable, Contractor shall hold Owner, Construction Manager, and Architect harmless from and indemnify Owner, Construction Manager, and Architect against all such additional cost, expense liability or damage in accordance with the provisions of Article 11.

§ 8.2.6 The Work shall be performed during designated working hours, except that in the event of emergency or when necessary to perform the Work in accordance with the requirements of § 8.2, Work shall be performed at Contractor's cost and expense on other shifts, overtime, Saturdays, Sundays, Holidays and at other times, if permission to do so has been obtained in writing from Owner. Without limiting the requirements of the preceding sentence, if the progress of the Work or of the Project has been delayed by any fault, neglect, act or failure to act of Contractor or any of its Subcontractors or suppliers, Contractor shall work such overtime, at Contractor's cost and expense as aforesaid, as Construction Manager shall deem necessary or desirable to make up for all time lost and to avoid delay in the completion of the Work and of the Project. The failure by Construction Manager to direct Contractor to engage in such overtime shall not relieve Contractor of the consequences of its delay.

§ 8.2.7 Unless otherwise noted, the date of commencement of the Work is the date established in the Agreement. Contractor shall organize construction schedules as specified in § 3.10, Contractor's Construction Schedules. The commencement date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

§ 8.2.8 The Construction Manager may direct acceleration of the Work so that it may be performed in advance of the schedules, time requirements and Project requirements. If so directed, Contractor shall increase its staff and/or work overtime. Contractor will not be entitled to additional compensation for Work performed outside of designated working hours, except as approved by Owner. Provided that Contractor is not in default under the Contract, and Owner has issued the aforesaid authorization, there shall be added to the Contract Sum as actual out-of-pocket amount equal to:

- .1 Additional premiums on wages actually paid, at rates that have been accepted by Construction Manager and Architect
- .2 Taxes imposed by law on such additional wages;
- .3 Premiums for worker's compensation and liability insurance if required to be paid on such additional wages.

Written authorization for overtime work that exceeds \$500.00 for which Contractor intends to charge the Owner in any one week shall be invalid unless confirmed in writing by the Owner, it being understood that Owner's Designated Representative shall not have authority to authorize such overtime which exceeds \$500.00 in any one week.

§ 8.2.9 In no case shall the contractor delay the progress of the Work or any part thereof on account of changes in the Work or disputes caused by proposed or ordered changes in the Work or any disputes or dis-agreements as to the equitable value of such changes.

§ 8.2.10 Contractor and Contractor's Surety shall be strictly accountable for completion as a condition to satisfactorily contractual performance.

§ 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. Should Contractor be obstructed or delayed in the commencement, prosecution or completion of the Work, without fault on its part, by reason of failure to act, direction, order, neglect, delay or default of the Owner, Construction Manager, or the Architect; by changes in the Work; fire, lightning, earthquake, enemy action, act of God or similar catastrophe; by Governmental restrictions with respect to materials or labor, or by an industry-wide strike beyond Contractor's reasonable control, then Contractor shall be entitled to an extension of time lost by reason of any and all causes aforesaid, but no Claim for extension of time on account of delay shall be allowed unless a Claim in writing therefore is presented to Construction Manager with reasonable diligence but in any event not later than fifteen (15) days after the commencement of such claimed delay. Except for the causes specifically listed above in this sub-section, no other cause or causes of delays shall give rise to an extension of time to perform the Work. The granting of an extension of time is conditioned upon Contractor's timely submission of the aforesaid written notice. Except to the extent, if any, expressly prohibited by law, Contractor expressly agrees not to make, and hereby waives, any Claim for damages, including those resulting from increased labor or material cost, on account of any delay, obstruction or hindrance for any cause whatsoever, whether or not foreseeable and whether or not anticipated including but not limited to the aforescribed causes, and agrees that the sole right and remedy therefore shall be extension of time, provided the requisite condition as to written Claim has been met.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. If Contractor claims an increase in the Contract Sum or an extension in the completion time required by reason of a change in the Work, Contractor shall give Construction Manager and Architect written notice within fifteen (15) days after Contractor's knowledge of the occurrence of the matter giving rise to such Claim. This notice shall be given by Contractor before proceeding to execute the changed Work, except in an emergency endangering life or property in which case Contractor shall proceed in accordance with § 10.3. No such Claim will be valid unless notice is given as

required in this section. Contractor shall proceed to execute the Work, even though the increase or time extension has not been agreed upon.

§ 8.3.2.1 Extension of time, if requested by the Contractor, shall only be considered after the Contractor has made reasonable effort to recover the lost time. These efforts shall be documented by the Contractor and submitted to the Architect.

§ 8.3.2.2 An extension, or extensions, of time may be granted subject to the provisions of this article, but only after written application therefore by the contractor in accordance with Article 15.

§ 8.3.2.3 An extension of time shall be only for the number of days of delay that the Construction Manager may determine to be due solely to the causes set forth in the application for 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 Construction Manager.

§ 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. Contractor shall not be allowed an extension of time unless Contractor has established to the satisfaction of the Owner, Construction Manager, and Architect that the delay claimed by Contractor is to a portion of the Work on the critical path of the work schedule.

§ 8.3.4 Under no circumstances will Contractor look to or make a Claim against Owner, Construction Manager, or Architect for the consequences of any delay resulting from directions given or not given by Construction Manager including scheduling and coordination of the Work or resulting from Architect's preparation of Drawings and Specifications or review of Shop Drawings.

§ 8.3.5 When the Contract Time has been extended, such extension of time shall not be considered as justification for extra compensation to the Contractor for administrative costs or other similar reasons.

#### **§ 8.4 Damages for Delay**

**§ 8.4.1 Architectural Changes for Delay in Completion.** If the entire work is not fully completed within the maximum allowable time for completion specified in the agreement, including any extensions granted thereto, architectural charges incurred by the Owner, from the completion date thus established to the actual final Date of Substantial Completion of the work, shall be charges to the Contractor for failing to complete its work by the stipulated date and be deducted from the final monies due the Contractor. Such charges shall be determined at the rate of \$750.00 per day per man for each and every man and day that the Architect and Construction Manager needs to furnish project management or an on-site Construction Manager Representative.

**§ 8.4.2 Liquidated Damages for Delay in Completion.** Failure to complete the work within the maximum allowable time for completion specified in the Agreement and/or the Milestone Schedule, including any extensions granted thereto, or failure to meet an intermediate milestone date as established by the Milestone Schedule, shall entitle the Owner to deduct from monies due to the Contractor, or to otherwise charge the Contractor, as liquidated damages the amount per calendar day of One Thousand Dollars (\$1,000.00) for each calendar day beyond such maximum allowable time in the completion of the work. Such amount of liquidated damages shall be in addition to the \$750 per day charges for delay described in Paragraph 8.4.1.

The absence of a liquidated damage amount and/or other criteria concerning same shall not preclude the Owner from exercising its rights. All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 8 shall not exclude recovery by Owner for damages (including but not limited to fees and charges of Engineers, Architects, Construction Manager, Attorneys and other professionals and court and litigation costs) for delay by the Contractor.

**§ 8.4.3 No Damage for Delay.** Each Prime Contractor agrees to make no claims for delay in the performance of this Contract occasioned by an act or omission, or act of the Owner of any of its representatives and agrees that such a claim shall be fully compensated for by an extension of time to complete the performance of the work as provided herein.

**PAGE 41**

**§ 9.2.1** Submit a printed schedule on AIA form G703 – Application and Certificate for Payment Continuation Sheet. Submit in duplicate to the Architect within 15 days after date of Owner-Contractor Agreement.

**§ 9.2.2** Format: Utilize the Table of Contents of the Project Manual. Identify each line item with number and title of the Specification Section for each Project site. Provide breakdown of both labor and materials.

**§ 9.2.3** Include within each line item a direct proportional amount of contractor’s overhead and profit.

**§ 9.2.4** Line item for Record Drawings which are to be turned over to the Owner at the end of the Project shall not be less than 0.15 percent of the Contract price.

**§ 9.2.5 Schedule of Contract Values**

- .1** The list of items shall include all items included in all Divisions and Sections of the specifications and shall be shown as separate line items.
- .2** The following items shall also be listed separately as line items (with their respective values):
  - Bond and Project Insurance.
  - Mobilization and Demobilization.
  - Superintendence.
  - Training, Operations and Maintenance Manual, Construction Record Documents.
  - Each Allowance associated with the Contract.
  - Each Alternate accepted.
  - Each Change Directive as it is issued; to be listed below the associated allowance.
  - Each Change Order as it is issued.
  - Warranties.
  - Records Drawings.
  - Temporary Facilities.
  - Cleaning.
  - Submittals.
  - Items to be Completed List.
- .3** Contractor shall maintain and keep current all changes to the Schedule of Values caused by Change Orders, Construction Change Directives or other authorized changes. Such revised Schedule of Values shall be presented monthly with the Application 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. Applications for payment shall be made monthly on the current AIA Form G732-2019 Application and Certificate for Payment and G703 Continuation Sheet for operations completed in accordance with the Approved Schedule of Values. Applications shall be based on the contract prices of labor and materials incorporated into the Work and of materials suitably stored and secured up to the last day of the previous month, less retainage and less the aggregate of previous payments. Change orders when approved shall be listed at the bottom of the last sheet of the payment application.

**§ 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. At least twenty (20) days prior to date established for each progress payment, each Contractor shall submit to the Construction Manager for its review, a preliminary pencil copy of an itemized Application for Payment completed in accordance with the approved Schedule(s) of Values.

**§ 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. Such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives but not included in Change Orders. Such items, if anticipated to be paid from an Allowance, shall be listed under that associated Allowance.

§ 9.3.1.3 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

§ 9.3.1.4 All supporting data requested by the Construction Manager and Architect from Subcontractors and material suppliers necessary to substantiate the Contractor's right to payment shall be furnished by the Contractor.

§ 9.3.1.5 Until the Contract-scheduled date of Substantial Completion (including authorized adjustment), the Owner shall pay 95% of the amount due the Contractor on account of progress payments, less an amount equal to 250% of the amount of any Claims, liens, or judgments against the Contractor which have not been satisfactorily discharged.

- .1 Retainage resulting from § 9.3.1.5 shall be 5% plus an amount equal to 200% of the amount of any Claims, liens, or judgments against the Contractor which have not been satisfactorily discharged.
- .2 At Substantial Completion, when satisfied with the progress of the Work, the Owner, with Consent of Surety, may adjust the amount retained from previous progress payments in accordance with § 9.8.3.
- .3 The full retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and the Architect, if the Surety withholds his consent or for other good and sufficient reasons.

§ 9.3.1.6 Each Contractor shall submit three (3) final copies of their Application for Payment, incorporating those revisions noted on the pencil copies, to the Construction Manager within two (2) days after being notified that the draft copy, with revisions, is acceptable.

§ 9.3.1.7 The final copies of each Application for Payment (AIA Form G732-2019) shall be signed by an officer of the Contractor whose signature shall be notarized in the space provided.

§ 9.3.1.8 Applications shall be based on the completed Work as described above less retainage, and less the aggregate of previous payments. Change Orders when approved shall be listed at the bottom of the last sheet of the payment application.

**PAGE 43**

§ 9.3.2.1 Procedures required by Owner shall include, but are not necessarily limited to, submission by the Contractor to the Construction Manager and Architect of bills of sale and bills of lading for such materials and equipment, provision of opportunity for the Construction Manager's and Architect's visual verification that such materials and equipment are in face in storage; and, if stored off-site, submission by the contractor of verification that such 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, and upon which partial payments have been made, shall become the property of the Owner. The care and protection of such materials and equipment shall remain the responsibility of the Contractor until incorporation into the Work, including property storage and maintenance of insurance coverage against theft, damage and fire on a replacement cost basis without voluntary deductible.

#### **§ 9.3.2.3 Stored Materials**

- .1 If the Contractor intends to request payment for materials stored on the site in accordance with the provisions of the Contract Documents, he must identify same on the current Contractor's Application for Payment form. The value of previous months' "stored materials" shall be included in the "Work Completed" column of the current application.
- .2 The relationship of labor and materials as indicated on the Payment Application shall be the basis for establishing the rate of payment for the transfer of material stored to materials installed.
- .3 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.
- .4 Payment for stored materials shall be in the amount of 95% of the value of stored materials less 5% retainage.

§ 9.3.3.1 The Contractor shall keep the Owner and the Owner's property (including funds for payment under the Project) free from all liens, legal or equitable, arising out of Contractor's Work hereunder. If any such lien is filed with the Owner by anyone claiming by, through or under the Contractor, the Contractor shall discharge the lien within 10 days of the filing thereof. The Contractor further expressly agrees to defend the Owner, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against the Owner as a result of liens filed against payments due the Contractor or the Work, the site of any of the Work, the Project site and any improvements thereon or any portion of the property of the Owner. The Contractor hereby agrees to indemnify and hold the Owner 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. The Owner agrees to release any payments with as a result of a duly filed lien, upon compliance by the Contractor with the applicable discharge or vacatur provisions of the Lien Law.

§ 9.3.4 The Contractor and all of its subcontractors shall submit to the Owner, within thirty (30) days after issuance of their first certified payroll and every thirty (30) days thereafter, a transcript of the original certified payroll record, as provided by the Labor Law, subscribed, and affirmed as true under the penalties of perjury for the Contractor and all its Subcontractors. Failure to do so shall be cause for the Owner to withhold payment until such records are received.

§ 9.3.5 When the Construction Manager or Architects requires substantiating information, submit data justifying dollar amount in question. Provide one copy of data with cover letter for each copy of submittal. Show application number and date, and line item by number and description."

§ 9.3.6 The Contractor further expressly undertakes to defend the Owner, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Owner 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 Owners (referred to collectively as liens in §9.3.3). The Contractor hereby agrees to indemnify and hold Owner 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.

§ 9.3.7 The Owner shall release any payments withheld due to a lien or a 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 the maximum amount prescribed by law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this § 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.

§ 9.3.8 The Contractor agrees to waive any right which it may have to assert a mechanic's or other lien against the Project site and any improvements thereon, including, without limit, the Work itself. Furthermore, the Contractor will cause a similar provision, waiving any right to a mechanic's or other lien against the property, to be included in all of its subcontracts, any subcontracts, and all contracts with material suppliers. Upon execution of the Agreement, the Contractor shall also execute the waiver of lien attached to the Agreement and made a part thereof as an Exhibit.

#### **PAGE 45**

§ 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 and as permitted by State Law, 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, 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

#### **PAGE 46**

- .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; or
- .8 any other breach of this Agreement.

...

§ 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,~~ 30 days after receipt, and shall so notify the Construction Manager and Architect.

**PAGE 47**

§ 9.6.9 Upon Substantial Completion of the entire Work, the Contractor shall submit a requisition for the "contract balance". The Owner shall pay the remaining amount less the greater value of a lump sum of \$10,000 OR the sum of two- and one-half times the value of any items to be completed plus an amount necessary to satisfy any outstanding Claims, liens, or judgments against the Contractor. Until all remaining items of Work are satisfactory completed or corrected, the Owner may hold all retainage, including monies for all "uncompleted" items, until all items are completed, and closeout submittals are complete.

§ 9.6.9.1 Contractors' requests for discontinuance of retainages shall be accompanied by a properly executed copy of the "Consent of Surety to Reduction in or Partial Release of Retainage", AIA Document G707A.

**§ 9.6.10 Retainage**

§ 9.6.10.1 Applications for Payment shall include a retainage amount of not less than five percent (5%) of the value of the completed work. Reduction of retainage shall only be approved upon completion of the Work and when authorized by the Owner in writing.

If the Construction Manager and Architect ~~do not fail persistently to~~ 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 fails persistently to 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, Architect, then the Contractor may, upon seven thirty 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.

...

§ 9.8.3.1 No partial payments will be made after the time fixed for the completion of the Work or the time to which completion may be extended under the terms of the Contract, until the full and final completion and acceptance of all Work herein agreed upon.

§ 9.8.3.2 Where project includes heating and/or air conditioning or other systems that are not put into operation at the time of occupancy, a sum shall be withheld until these systems have operated to the general satisfaction of the Architect. The retained amount shall approximate 5% of the cost of the systems as determined by the cost breakdown submitted.

§ 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. Completion or this Agreement.

**PAGE 48**

§ 9.8.6 If the Architect and/or the Construction Manager are required to inspect the Work more than two (2) times prior to certifying the Work as being substantially complete on account of the discovery of one or more items that are not sufficiently complete, the Contractor shall be liable to the Owner for the amount of any costs, additional fees or compensation due from or paid by the Owner to the Architect and/or the Construction Manager for the additional inspections.

...

§ 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 used. The Contractor will provide the Owner and Construction Manager with photographs documenting the condition of the space to be occupied. The photographs must be dated and supplied within three (3) business days of the inspection. Any subsequent damage to the space which cannot be confirmed by the Contractor's photographs (as occurring as a result of the Owner's occupancy) will be repaired by the Contractor at no additional cost to the Owner.

PAGE 49

§ 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 its discretion.

§ 9.10.1.2 If the Architect and Construction Manager are required to perform additional inspections subsequent to the "final inspection" because the Work fails to comply with the requirements of the Contract, the amount of compensation paid to the Architect and Construction Manager 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 Manager:

...

- (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and ~~(6)~~;
- (6) 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.
  - (a) 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 requested in § 9.10.2 above, the Contractor shall submit releases or waivers of liens from each Subcontractor, material supplier, and others with lien rights against the property of the Owner and shall submit a list of such parties.

...

- .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~~ payment;  
or
- .5 Costs, loss or damages sustained, either prior to or subsequent to such payment, as a result of any breach of the Contract, or any wrongful act or omission of the Contractor or any Subcontractor.

PAGE 50

§ 10.1.1 Contractor is fully responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and the Work site consistent with applicable laws and regulations, and generally accepted standards in the construction industry. Contractor acknowledges and agrees that it is fully responsible for the supervision and control of the Work and of Contractor's employees, subcontractors and/or suppliers, (and any party employed directly or indirectly by any of them, or for whom any of them are legally responsible) and the means, methods and manner in which the Work is performed.

§ 10.1.2 Contractor specifically agrees to provide all necessary equipment, give all required notices, perform all required tests, and to employ all necessary safety measures and procedures to protect its employees, agents, subcontractors, and all other persons at the Project site from any hazards created directly or indirectly by Contractor's operation or performance of the Work, and any hazards which are not created by Contractor's operations or performance of the Work to which such parties are exposed at the Project site as a result of Contractor's operations or performance of the Work. In the event that equipment or safety devices are required, Contractor agrees that it will obtain such equipment or safety devices and employ same at its sole expense, and will strictly adhere to all provisions of the Occupational Safety and Health Act, as well as any State statutes, codes, rules and regulations pertaining to the safety or property as may be deemed applicable to the Contractor's work or the work of any person or party directly or indirectly employed by Contractor or for whom contractor is responsible. Contractor agrees that it shall be Contractor's sole responsibility to ensure that each of its employees, subcontractors and suppliers are also fully aware and in compliance with all such statutes, codes, rules and regulations at all times.

§ 10.1.3 From the commencement until the acceptance of the Work, Contractor shall be solely responsible for the care of the Work covered by the Contract and for the materials, supplies and equipment delivered at the Site intended to be used in the Work, and all injury or damage to the same from whatever cause shall be made good at this expense before the final payment is made. Contractor shall provide suitable means of protection for and shall protect all materials intended to be used in the Work, all work in progress, and all completed work. Contractor shall take all necessary precautions to prevent injury or damage to the Work by flood, fire freezing or from inclemencies of the weather.

§ 10.1.4 Not by way of limitation of the foregoing, at the end of each workday, Contractor shall secure all power tools and other potentially dangerous tools and equipment and shall remove means of access to areas of the Work site, so as to further protect the safety of occupants of the premises during such off-work hours.

§ 10.1.5 Contractor's obligations under this section are not dependent upon any question of negligence on its part or on the part of its officers, agents, servants or employees, and neither the approval by the Architect or the Owner to Architect to call attention to improper or inadequate methods or to require a change in methods nor the neglect of the Architect or the Owner to direct Contractor to take any particular precautions or to refrain from doing any particular thing shall excuse the Contractor from his obligations hereunder in case of any such injury to person or damage to property. The provisions of this section are intended for the sole benefit and protection of the Owner and shall not create any cause of action in favor of any person, corporation entity, other than the Owner.

PAGE 51

§ 10.2.2.1 The Contractor acknowledges that certain applicable laws, including, but not limited to, Sections 240 and 241 of New York State Labor Law, may impose liability on the Owner for injuries to persons employed by the Contractor or by its Subcontractors or Sub-subcontractors. As between the Owner and the Contractor (or any of the Contractor's Subcontractors or Sub-subcontractors or any persons for which any of them shall be responsible), the Contractor shall be solely responsible for compliance with all such laws to the extent they pertain to the safety or protection of persons on the Project site or performing the Work. Any claim, charge, penalty or cause of action arising out of or on account of any such law shall be subject to Section 3.18.

...

If either party suffers injury or damage to person-**Injury or Damage to Person or Property.** If the Contractor suffers injury or damage to persons 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-Owner or of any of the Owner's employees or agents or any others for whose acts the Owner is legally

responsible, the Contractor shall give written notice thereof to the Owner and the Architect within a reasonable time not exceeding 21-2 days after ~~discovery~~-first observance. The notice shall provide sufficient detail to enable ~~the other party to investigate the matter~~ to Owner to investigate the matter. If a Claim for additional cost or additional time is related to this Claim, it shall be made in accordance with the provisions of Article 15.

**§ 10.2.9 Restoration.** If during the construction, public or private property is damaged or destroyed as a result of its Work, the Contractor responsible shall, at its own expense, restore such property to a condition equal to that existing before such damage or injury was done, by cleaning up, repairing, rebuilding or replacing it, or otherwise making good such damage or destruction in an acceptable manner.

**§ 10.2.10 OSHA.** In addition to all requirements set forth herein, all Contractors and Subcontractors who perform any Work under this Contract will fully comply with the provisions of the Federal Occupational Safety and Health Act (OSHA) of 1970 and with any rules and regulations pursuant to the Act. This requirement shall apply continuously and not be limited to normal Working hours. The duty of the Construction Manager, Architect to conduct construction review of the Contractor's or its Subcontractor's performance is not intended to include review of the adequacy of the Contractor's or its Subcontractor's safety measures in, on or near the construction site or buildings.

**§ 10.2.11 Welding:**

- .1 All welding shall be done in accordance with the American Welding Society Code for Arch Welding Society, certified for current year.
- .2 When cutting or welding is to be done, the Owner **MUST** be notified prior to start. In addition, the Contractor for the Work shall provide a **fire guard** with proper fire extinguisher for duration of cutting and welding work.
- .3 A welding curtain is to be installed around area where welding or cutting is to be done. No welding machines will be tied into electric panels without express permission from the Owner. Portable gasoline driven generators may **not** be used without the expressed permission of the Owner.
- .4 Obtain Owner's permission for each location in existing building where welding is required. Owner's stipulated requirements shall be adhered to.

**§ 10.2.12 Open Burning.** Open burning on the site is prohibited. All possible precautions shall be taken to prevent fires.

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

**§ 10.2.13** 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 from damage by any cause.

**§ 10.2.14** The Contractor shall promptly report, in writing, to the Construction Manager, Architect and the Owner all accidents arising out of or in connection with the Work that causes property damage, personal injury or death, giving full details and statements of any witnesses. In addition, if death, serious personal injury or serious property damage is caused, the accident shall be reported immediately by telephone or messenger to the above parties."

**§ 10.2.15** The Contractor shall be solely responsible for the conditions which develop during construction and in the event any structure is dislocated, over strained, or damaged so as to affect its usefulness, the Contractor shall be solely responsible. The Contractor shall take whatever steps necessary to strengthen, relocate or rebuild the structure to meet requirements.

**§ 10.2.16** 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.

**§ 10.2.17** 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.

§ 10.2.18 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.

§ 10.2.19 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.

§ 10.2.20 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.

§ 10.2.21 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.

§ 10.2.22 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.

**PAGE 53**

§ 10.3.2 Upon receipt of the Contractor's written 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.

**PAGE 54**

In an emergency 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. § 10.4.1.1 In an emergency affecting life, the Work, or the Owner or Owner's property, Contractor, without special instructions or authorization from Construction Manager or Architect, shall take the action necessary to deal adequately with such emergency. Notice of any such action shall be given by Contractor to Construction Manager, Architect and Owner as soon as is practicable, but not later than 2 days following the occurrence.

...

§ 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 occurrence-based insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located and rated B+ or better by A.M. Best Company and to which the Owner has no reasonable objection. 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.

§ 11.1.1.1 Within the time period set by the Owner after award of the Contract, and before the effective date of the Agreement, the Contractor shall cause the authorized representative of the insurance company to completely fill out and execute the Certificate of Insurance form which is bound with the Agreement section of the Contract Documents, such instrument certifying the kinds and amounts of insurance being issued, including statement that coverage provided under the policies will not be canceled or materially changed until at least 30 days prior written notice has been given to the Owner. The Contractor shall also furnish the Owner one (1) duplicate of the original policy covering each kind of insurance issued. Each subcontractor shall follow the identical procedure, and it shall not commence work until the Certificate of Insurance, including any requested duplicate policies, has been submitted to and approved by the Owner. The Contractor shall furnish to the Owner insurance certificates for all subcontractors with the amount of insurance as required herein. Contractor shall include New York Construction Certificate of Liability Insurance Addendum – Accord Form 855 with the Certificate of Insurance.

§ 11.1.1.2 All claims against the Contractor or its subcontractors, arising from the performance of the work or conditions incidental thereto, must be investigated immediately by the insurance company furnishing the applicable coverage. The Contractor shall require the insurance company to furnish, to the Architect and Owner, written reports following the investigation and the disposition of each claim or demand by the owner; a status report shall be provided to the Owner and Architect on all claims more than two months outstanding.

§ 11.1.1.3 All insurance coverage furnished by subcontractors shall remain in force until their work has been completed and the subcontractor does not intend to gain further access to the site, and the Contractor has released said subcontractor from further liability associated therewith. All liability insurance furnished by the Contractor shall remain in force during the time intervals defined Article 8 – Time in General Conditions of the Contract for Construction and Supplementary Conditions. All property insurance furnished by Contractor shall remain in force until Owner approves Architect's Certificate of Substantial Completion and has made final payment to Contractor.

§ 11.1.1.4 The kinds and amounts of insurance are as follows:

- .1 **Worker's Compensation and Employer's Liability:** A policy shall be issued in compliance with the provisions of the Worker's Compensation Law.
- .2 **Non-Occupational Disability Benefits:** A policy shall be issued in compliance with the provisions of the Disability Benefits Law.
- .3 **Comprehensive General Liability** having limits of not less than:

General Aggregate (except Products Complete & Operations)	\$2,000,000
Products Complete & Operations Aggregate	\$1,000,000
- .4 **BODILY INJURY LIABILITY + PROPERTY DAMAGE LIABILITY** having limits of not less than the following:

Combined single limit	\$1,000,000.00 Each Occurrence
	\$2,000,000.00 Aggregate

for all damages arising during the life of the Contract, and shall include at least the following designated hazards:

- a. Premises and Operations
- b. Independent Contractors
- c. Completed Operations, including products
- d. Broad Form Property Damage, including "XCU" (explosion, collapse, and underground)

- e. Contractual Liability, covering indemnification assumed per requirements of Article 11 (AIA Document A232 -2019 General Conditions of the Contract for Construction, Construction Manager as advisor edition and Supplementary Conditions.
- f. Fire damage.
- g. Personal and Advertising Injury with Employment Exclusion deleted.
- h. Labor Law coverage is mandatory for all General Liability Policies.

Completed projects shall carry General Liability coverage for 2 years after substantial completion.

- .5 Pollution/Special Hazards Liability:** Provide coverage for legal liability and expense for damage to property or bodily injury and death with respect to the removal, disturbance, handling, and disposal of contaminated or hazardous materials under this contract by the Contractor or any person or organization employed directly or indirectly by the Contractor. (NOTE: This coverage is required only for those contracts which contain work involving Asbestos Abatement Lead Hazard Control work, PCB Containing Material Removal, or Petroleum Remediation.) If included in Contractor’s Umbrella Policy, this shall be detailed in the Umbrella Policy Documents.

Combined single limit	\$1,000,000.00 Each Occurrence
	\$2,000,000.00 Aggregate

- .6 Comprehensive Automobile Liability** (including non-owned and hire automobiles), having limits of liability not less than \$1,000,000.00.

- .7 Umbrella Liability** (mandatory):

\$2,000,000.00 for Contracts under \$2,000,000.00  
\$5,000,000.00 for Contracts exceeding \$2,000,000.00  
\$10,000,000.00 for Contracts exceeding \$7,000,000.00  
\$15,000,000.00 for Contracts exceeding \$10,000,000.00  
Labor Law Coverage is mandatory for all Umbrella Liability Policies

- .8 Property Insurance (Builders Risk/Installation Floater):** To be provided by the Owner.

Each Contractor is responsible for all tools, equipment, materials, Work, etc., until Substantial Completion and possession by the Owner. Each Contractor shall provide insurance for theft as he may require for himself, his Subcontractors, and his employees’ protection). The insurance coverage referred to in this subparagraph shall be in accordance with a standard Builder’s Risk Policy used in the State where the project is located.

The Owner does not waive any rights of recovery or provide any waivers of subrogation for losses caused by negligent acts of the aforementioned parties. Any right of recovery or subrogation shall not affect payment of claims made by the Property Insurer to all the aforementioned parties including any negligent party.

- .9 Owner’s Protective Liability:** Furnish to the Owner complete Owner’s Protective Liability Insurance in the amounts specified in Coverage .3 above for Personal Bodily Injury Liability Insurance and for Property Damage Liability Insurance.

- .10 Additional Coverages:** The Architect, Construction Manager and Owner along with their respective officers, agents, and employees shall be named as additional insured for ongoing operations and products/completed operations on all Contractors’ comprehensive general and automobile liability policies, bodily injury and property damage liability policies and umbrella liability policies which all must be primary and non-contributory with respect to additional insured’s.

- .11 Per Project Aggregate:** Provide full aggregate general liability limits of each project.

- .12 Waiver of Subrogation:** To the fullest extent permitted by state law, a waiver of subrogation clause shall be added to the general liability, auto, and worker’s compensation policies in favor of the Owner, its officers, agents, or employees with respect to this project. The Owner does not waive any rights of recovery or provide any waivers of subrogation for losses caused by negligent acts of the

aforementioned parties. Any right of recovery or subrogation shall not affect payment of claims made by the Property Insurer to all the aforementioned parties including any negligent party."

§ 11.1.1.5 The Contractor shall not commence Work at the project site under this Contract until Contractor has obtained all the insurance required herein and until such insurance has been accepted by the Owner, nor shall Work be commenced on their subcontracts until the same insurance for the Subcontractors has been obtained. The Owner and Architect may request copies of subcontractors' insurance certificate(s) and are to be provided to Owner and Architect by the Contractor upon request.

§ 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. Each Contractor shall furnish Bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder in the amount of 100% of the accepted bid on the form indicated in the Information to Bidders, with such Sureties as may be agreeable to the Owner. The Premiums shall be paid by the Contractor.

§ 11.1.2.1 The Contractor shall deliver the required Bond dated as of the date of the Contract or applicable letter of intent, whichever is earlier, to the Owner no later than the date of execution of the Contract, or if the Work is commenced prior thereto in response to a Notice to Proceed, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such Bond will be issued."

§ 11.1.2.2 The Payment and Performance Bonds shall be written on AIA Document A312 Series and the Warranty Bond shall be written on AIA Document A313-2020 or such other forms as the Owner may approve.

§ 11.1.2.3 The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power of attorney.

§ 11.1.2.4 The Contractor shall provide the name and address of Surety for process of service as well as supply the contact information for the Surety representative responsible for the Bond, including the individual's name, address, telephone number, fax number and email address."

§ 11.1.2.5 The Performance and Payment Bonds shall remain in full force and effect through the warranty period.  
**PAGE 56**

§ 11.1.3.1 The Contractor shall not commence Work at the project site under this Contract until Contractor has obtained all the insurance required herein and until such insurance has been accepted by the Owner, nor shall Work be commenced on their subcontracts until all similar insurance required of the Subcontractors has been obtained and accepted by the Owner.

**PAGE 58**

§ 11.3.1.1 As relates to § 11.3, the Owner does not waive any rights of recovery or provide any waivers of subrogation for losses caused by negligent acts of the aforementioned parties. Any right of recovery or subrogation shall not affect payment of claims made by the Property Insurer to all the aforementioned parties including any negligent party.

...

## **§ 11.6 Appearance of Counsel**

§ 11.6.1 If an action for bodily injury and/or property damage is commenced against Owner or Architect, which in the opinion of the Owner's Architect's legal counsel or insurance coordinator is covered by the indemnity provisions of Article 3, Contractor shall, upon Owner's written request, promptly cause Contractor's insurance carrier to have its attorneys appear timely in the action on behalf of Owner and/or Architect and provide the defense of Owner and/or Architect.

**PAGE 59**

§ 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. Exception: Any correction made under this 12.2.2 or under any other guarantee or warranty required by or included in the Contract Documents shall likewise be subject to correction at Contractor's own expense if it is found not to be in accordance with the Contract Documents within one year after the date that such correction is accepted by the Owner.

§ 12.2.2.4 The guarantee-warranties required by § 12.2.2 shall be written in a form acceptable to the Owner, properly sworn to and signed by a responsible officer of the Contractor's firm.

§ 12.2.2.5 The Performance and Payment Bonds shall remain in effect and full force through this period.

PAGE 60

§ 12.3.1 The Owner, with the advice of the Construction Manager and assistance of the Architect, shall determine the adjustment to the Contract Sum. The Contractor shall bear all direct, indirect and consequential costs attributable to the evaluation of and decision to accept such defective Work. Such costs for the efforts of the Construction Manager and Architect (at their current billing rates) and any other costs to the Owner will be charged to the Contractor through Change Order procedures.

...

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.~~located.

...

§ 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.

PAGE 61

§ 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.

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.~~ a rate of 1% per annum.

PAGE 62

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon ~~seven-thirty~~ days' notice to the Owner, Construction Manager and Architect, and upon the failure of the Owner to cure the alleged grounds for termination within 14 days following receipt of said notice, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

...

.1 repeatedly-refuses or fails to supply enough properly skilled workers or proper materials;

...

.3 repeatedly-disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of ~~substantial~~ breach of a provision of the Contract Documents.

.5 files for bankruptcy or other debtor insolvency relief;

.6 an act of omission by the Contractor that stops, delays, interferes with or damages the Work;

.7 any other failure by the Contractor to perform any other terms and conditions of their Contract;

.8 disregards the authority of the Owner.

...

§ 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:

PAGE 63

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement-executed.

...

§ 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.~~ The Owner may, but is not required to, comply with the provisions of Article 15 when filing a Claim.

...

§ 15.1.2.1 An additional Claim made after any initial Claim has been filed with the Owner, Construction Manager and Architect will not be considered unless submitted in a timely manner and in accordance with Article 15."

§ 15.1.2.2 Any Claim shall be sufficiently detailed and descriptive to allow for a complete evaluation. The Contractor shall furnish any information requested by the Owner or Architect in connection with this investigation within ten (10) business days of that request. Failure to provide the requested information shall constitute a waiver of the Claim.

§ 15.1.2.3 All written Claims for additional cost, additional time, or damages shall include the time of occurrence, location and other identifying factors and shall be supported, at a minimum, by letters, photographs, journals and diaries, instructions, or other pertinent and applicable records, as the Architect and Owner may require.

§ 15.1.3.1 Claims by either the Owner or other parties or the 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 Owner 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 the Contractor under this Section 15.1.3.1 shall be initiated within 21-15 days after occurrence of the event giving rise to such Claim or within 21-15 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 other parties or the 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.

§ 15.1.3.3 An additional Claim made after any initial Claim has been filed with the Owner and Architect will not be considered unless submitted in a timely manner and in accordance with Article 15.

§ 15.1.3.4 Claims by the Contractor must be made by written notice in accordance with the following procedures:

- .1 The Contractor may submit a claim concerning a matter properly noticed in accordance with the time requirements of this Contract.
- .2 Failure by the Contractor to furnish the required claim documentation within the time set forth above shall constitute waiver of the Contractor's right to compensation for such claim.
- .3 Contractor shall furnish three (3) certified copies of the required claim documentation, with a copy submitted to the Owner and Architect. The claim documentation shall be complete when furnished. The evaluation of the Contractor's claim will be based, among other things, upon the Owner project records and the Contractor's furnished claim documentation.
- .4 Claim documentation shall conform to Generally Accepted Accounting Principles and shall be in the following format:
  - A. General Introduction
  - B. General Background Discussion
  - C. Issues
    - 1) Index of Issues (listed numerically)
    - 2) For each issue:
      - (a) Background
      - (b) Chronology
      - (c) Contractor's position (reason for Owner's potential liability)
      - (d) Supporting documentation of merit or entitlement
      - (e) Begin each issue on a new page
  - D. All critical path method schedules, (as planned, monthly updates, schedule revisions, and as-built) along with the computer disks of all schedules related to the claim.
  - E. Productivity exhibits (if appropriate)
  - F. Summary of Issues and Damages
- .5 Supporting documentation of merit for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to, general conditions; general requirements; technical specifications; drawings; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the Contractor's claim.
- .6 Supporting documentation of damages for each issue shall be cited, photocopies, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the bid; certified, detailed labor records including labor distribution reports; material and equipment procurement records; construction equipment ownership cost records or rental records; subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; project as-planned and as-built cost records; general ledger records; variance reports;

accounting adjustment records; and any other accounting materials necessary to support the Contractor's claim.

- .7 Each copy of the claim documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of these Contract Documents.

PAGE 65

**§ 15.1.7 Waiver of Claims for Consequential Damages.** ~~The Contractor and Owner waive Claims against each other~~ waives all Claims against the Owner 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 waiver includes, but is not limited to, 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 losses and reputation damage, and for loss of profit. This waiver also 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. Owner's termination of the Contract in accordance with Article 14, and the Contractor's sole rights to payment in the event of any termination of the Contract by the Owner are limited to the payments expressly set forth in Article 14.~~

#### **§ 15.1.8 Limitation and Waiver of Money Damages**

**§ 15.1.8.1** Notwithstanding anything else set forth in the Contract Documents or otherwise, the Owner shall not be liable to the Contractor and/or any Subcontractor for Claims or damages of any nature caused by or arising out of delays, impacts on schedule, schedule acceleration, schedule compression or by any breach of contract, delay in performance or other act of neglect by other Contractors or Subcontractors having Contracts for performance of any portion of Work. Except to the extent, if any, expressly prohibited by law the Contractor agrees not to make any Claim for such damages. The sole remedy against the Owner for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be subject to the Claims procedure set forth herein. The Contractor understands that it hereby agrees not to make, and hereby waives, any Claim for damages for delay from any cause whatsoever, including but not limited to, those resulting from increased labor or material costs; schedule acceleration, schedule compression, directions given or not given by the Construction Manager, Owner or Architect, including but not limited to scheduling and coordination of the Work; the Architect's preparation of Drawings and Specifications; the Architect's review of shop drawings and requests for instruction(s); or on account of any delay, obstruction or hindrance for any other cause whatsoever by the Owner, Construction Manager, Architect or any other Contractor on the project whether or not foreseeable or anticipated. The Contractor agrees that no monetary recovery may be obtained by the Contractor for any of the foregoing against the Owner, Construction Manager or the Architect based upon any reason, and it is emphasized that the Contractor's sole remedy for any of the foregoing shall be an extension of time, if appropriate.

...

**§ 15.2.1** ~~Claims, Claims by the Contractor,~~ Claims by the Contractor, 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, the Claim, or~~ (6) submit a schedule to the parties indicating when the Architect expects to take action.

PAGE 66

§ 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 and, if the parties fail to resolve their dispute through mediation, to ~~binding dispute resolution.~~ litigation.

...

§ 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.~~ mediation. 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.~~

...

#### § 15.4 Arbitration Litigation

§ 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.~~

Claims that have not been satisfactorily resolved by other means shall be subject to litigation in accordance with law. The Contractor shall comply with any applicable statutory requirements regarding Notice of Claim and with any applicable Statute of Limitations provisions. In the event the Contractor serves a Notice of Claim to the Owner, the Owner may, as a condition precedent to litigation, require the Contractor to submit to an examination under oath by an attorney or other representative of the Owner, and to provide documentary evidence reasonably requested in connection with the examination. The venue of any litigation shall be New York State Supreme Court in the county in which the Project is located. The prevailing party of the litigation shall be entitled to reasonable attorneys' fees and necessary disbursements. ~~§ 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.~~

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Katrina Asay, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:00:51 ET on 10/10/2023 under Order No. 2114414540 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A232™ – 2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.



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*(Signed)*

**Manager of Administration - Buildings Group**

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*(Title)*

**October 10, 2023**

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*(Dated)*