

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Liability Insurance

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

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entitles shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project. As required by the New York State Workers' Compensation Law, all out of state contractors working in New York must provide a Workers' Compensation Insurance Policy that specifically lists New York in Item 3A of the Policy Information page;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees, or persons or entities excluded by statute from the Requirements of Clause 11.1.1.1 but required by the Contract Documents to provide the insurance required by the Clause;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. Claims for damages insured by usual personal injury liability coverage;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
7. Claims for bodily injury or property damage arising out of completed operations; and
8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18, including omissions and supervisory acts by the Owner.
9. Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis. The required coverage shall be written on an occurrence basis and shall include the following:
  1. Premises Operations (including X, C, and U coverage's as applicable).
  2. Independent Contractor's Protective.
  3. Products and Completed Operations.
  4. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18 of the General Conditions.
  5. Owned, non-owned and hired motor vehicles.
  6. Broad Form Property Damage including Completed Operations.
  7. Personal Injury Liability.
10. All insurance policies (excluding workers' compensation) shall name the Owner, Architect and their consultants and Construction Manager as additional insureds. In addition, the insurance policies required to be purchased and maintained by the Contractor under this Agreement shall be: (i) written on an occurrence basis, and (ii) shall be primary on a per project basis for the defense and indemnification of any action or claim asserted against the Owner, Architect, Construction Manager and/or the Contractor for work performed under this agreement regardless of any other collectible insurance or any language in the insurance policies that may be to the contrary. The policies of the Owner, Architect, Construction Manager and their consultants shall be excess and noncontributory.
11. If the General Liability coverages are provided by a Commercial Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2, but in no event earlier than two (2) years from the final completion of the Project.

§ 11.1.2 Unless otherwise provided in the Contract Documents, the Contractor and each of its Subcontractors shall purchase and maintain the insurance required by this Contract in the amounts as identified herein below and

elsewhere in the Contract Documents. Such insurance shall be written for not less than any limits of liability required by law or those set forth in the Contract Documents, whichever is greater. All insurance shall be written on an occurrence basis. Coverage shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment. A copy of the additional insured endorsement shall be attached.

**§ 11.1.2.1** Contractor's insurance requirements shall be provided by an insurance carrier licensed to do business in the State of New York and have an A.M. Best Rating of A(-) or better as determine in the most recent A.M. Best Publication, or as may otherwise be required by the bid documents. The insurance required by this Article 11 shall be obtained by the Contractor and written for not less than the limits of liability set forth below or required by law, whichever coverage is greater. Coverages shall be maintained without interruption from the date of commencement of the Work until the date of Final Payment and termination of any coverage required to be maintained after Final Payment.

**Workers Compensation:**

**Statutory New York**

**Employer's Liability:**

Each Accident: \$1,000,000.00  
Disease, Policy Limit: \$1,000,000.00  
Disease, Each Employee: \$1,000,000.00

A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/15) must be included with the certificates of insurance.

**Commercial General Liability and Umbrella Liability:**

(Coverage: - Occurrence, using ISO Form CG 00 01 07 98 or later form)

**Limits per Project:**

Each Occurrence: \$6,000,000.00  
General Aggregate (per Project): \$7,000,000.00  
Products - Complete/Operations: \$7,000,000.00  
Personal & Advertising Injury: \$6,000,000.00  
Fire Damage (any one fire): \$50,000.00  
Medical Expense (any one person): \$10,000.00

Limits for Employers Liability, Commercial General Liability and Automobile Liability may be satisfied by the use of an Umbrella.

**Automobile Liability:** (Coverage - must include coverage for liability for all vehicles (owned, leased, hired and non-owned automobiles)

**Limits:** \$2,000,000.00 (each occurrence)

**Disability Benefits:** (Coverage - will be provided during the life of the Agreement for the benefit of such employees that are required to be insured by the applicable provisions of law).

**Riggers Liability:** If the scope of Work involves rigging, hoisting, lowering, raising or moving of property or equipment not belonging to the Contractor. Riggers Liability Insurance is required to insure for the full value of the property or equipment against physical damage/loss.

**Owner's Contractor's Policy:**

(OCP Named Insured to include: Owner)

**Limits:**

\$2,000,000.00 (each occurrence)  
Aggregate Limit, Bodily Injury and Property Damage: \$2,000,000.00

**§ 11.1.2.2** Additional Insureds: All insurance coverage to be provided by the Contractor and Subcontractors, with the exception of the Workers' Compensation, shall name the parties listed below as Additional Insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations and completed operations. Additional insured status shall be provided by standard or other endorsements that extend coverage to the District for both ongoing and completed operations. The decision to accept an endorsement rests solely with the District.

1. the Owner's Board of Education;
2. Members of the Owner's Board of Education, an officer, member of its staff or employee of said Board of Education, and the successors, assigns, affiliates, partners, agents, heirs, and personal representatives of each of the foregoing;
3. Architects and its Consultants;
4. Construction Manager; and

5. Additional individuals and entities as the Owner may so name.

§ 11.1.2.2 Additionally, the insurance coverage to be provided by the Contractor pursuant to this Article 11 shall state that the Contractor's coverage shall apply as Primary and Non-Contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.

§ 11.1.2.3 In the event that any of the insurance coverage to be provided by the Contractor to the Owner contains a deductible or self-insured retention, the Contractor shall indemnify and hold the Owner, Architect and Construction Manager harmless from the payment of such deductible, which deductible shall in all circumstances remain the sole obligation and expense of the Contractor.

§ 11.1.2.4 Contractor and all its Subcontractors shall maintain Completes Operations coverage for itself and each additional insured for at least two (2) year after completion of the Work.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. The Owner retains the right to request copies of actual policies and endorsements to verify coverage. These certificates and the insurance policies required by this Article 11 shall contain a provision that coverages afforded under the policies will not be allowed to be materially changed or canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 Subcontractor's Insurance: Except as otherwise approved in writing by Owner, Contractor shall cause each of the Subcontractors and Sub-subcontractors to procure and to maintain during the life of its Subcontract or Sub-Subcontract, insurance of the types and in the amounts required of Contractor and reasonable to the Owner. The Owner and the Architect, its Consultants, Construction Manager and all other designated entities will be added as additional insureds on a primary and non-contributing basis to the fullest extent permitted by law for all claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations which will also include completed operations for a period of not less than two (2) years after substantial completion. In the event the Contractor fails to obtain the required certificates of insurance from Subcontractor and a Claim is made or suffered, the Contractor shall indemnify, defend, and hold harmless the Owner, Architect, Construction Manager, Owner's Representative, Consultants, Sub-consultants and their agents or employees from any and all Claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to any other indemnity obligation provided in the Contract.

§ 11.1.5 The Contractor acknowledges that its failure to obtain or keep current the insurance coverage required by Article 11 shall constitute a material breach of contract and subjects the Contractor to liability for damages, including but not limited to direct, indirect, consequential, special and such other damages the Owner sustains as a result of such breach. In addition, the Contractor shall be responsible for the indemnification to the Owner of any and all costs associated with such lapse in coverage, including but not limited to reasonable attorneys' fees.

§ 11.1.6 The Contractor assumes responsibility for all injury or destruction of the Contractor's materials, tools, machinery, equipment, appliances, shoring, scaffolding, and personal property of Contractor's employees from whatever cause arises. Any policy of insurance secured covering the Contractor or Subcontractor leased or hired by them and any policy of insurance covering the Contractor or Subcontractors against physical loss or damage to such property shall include an endorsement waiving the right of subrogation against the Owner, Architect and Construction Manager for any loss or damage to such property.

§ 11.1.7 The amount of insurance required by the Construction Documents shall not be construed to be a limitation of the liability of on the part of the Contractor or any of its Subcontractors.

§ 11.1.8 Unless otherwise specified in the Contract Documents, Contractor may maintain Excess/Umbrella insurance, providing excess coverage over all limits for Employers Liability, Commercial General Liability and Automobile Liability to satisfy the limits required in 11.1.2.1.

§ 11.1.9 At the same time the Contractor submits its Insurance Certificate it shall also submit to the Architect the labor rates for each category of labor for which it or its Subcontractors shall employ (either directly or indirectly). This information shall be itemized in a format required by the Architect.

**§ 11.1.10 Asbestos/Lead Abatement Insurance**

With coverage for the services rendered to the Owner, including but not limited to removal, replacement, enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third party liability claims for bodily injury, property damage and cleanup costs: \$2,000,000 per occurrence; \$2,000,000.00 products and completed operations aggregate and \$2,000,000.00 General Aggregate. If retroactive date is used, it must pre-date the inception of the Contract.

§ 11.1.10.1 In addition, the contractors Pollution Liability policy shall also include coverage for non-owned disposal site liability, Mold Remediation and Related Expenses.

§ 11.1.11 If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948) as well as proof of MCS 09.

**§ 11.1.12 Rigging Liability**

If the scope of work involves rigging, hoisting, lowering, raising or moving of property or equipment not belonging to the Contractor, Rigging Liability Insurance is required for the full value of the property or equipment against physical damage/loss.

**§ 11.2 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**§ 11.3 Property Insurance**

§ 11.3.1 The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss. The form of policy for this coverage shall be Completed Value. Notwithstanding the definition of the "Work" in this Contract or in this Section 11.3.1.1, the Contractor assumes all responsibility for the safety and keeping of all tools and equipment and any materials or products used to complete or perform the Work, and which do not form a permanent part of the Work. The Contractor waives all rights against the Owner and Architect, their consultants, sub-consultants, employees and agents for any loss or damages to any such tools, equipment or any material or products used to complete or perform the Work, and which do not form a part of the Work. The Contractor shall require similar waivers in favor of the above named parties from all Subcontractors and Sub-subcontractors, agents and employees of any of them.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

§ 11.3.1.4 The Contractor shall provide insurance coverage for portions of the Work stored off the site, in transit, and stored on the site but not incorporated into the Work on a full replacement cost basis. The Contractor is responsible for all deductible amounts.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.1.6 The insurance required by Section 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools, or equipment which shall be subject to the provisions of Section 11.3.7.

§ 11.3.1.7 Owner shall not be responsible to or for the Contractor or Subcontractors against any loss by fire, lightning, extended coverage, all risk, theft or vandalism and malicious mischief, of any tools, equipment, vehicles,

shanties, tool houses, trailers, or other temporary or permanent structures wherever located and owned by the Contractor, Subcontractors, their employees or agents.

**§ 11.3.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**§ 11.3.3 Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, adjoining 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, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

**§ 11.3.7 Waivers of Subrogation.** The Owner and Contractor waive all rights against each other and any of their Consultants, Architects, Construction Manager, subcontractors, sub-subcontractors, agents and employees each of the other and Owner's 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 covered by property insurance obtained pursuant to this Article 11 or other insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Contractor shall require each of the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. To the extent that a waiver of subrogation is unavailable to the Owner and the absence of such right of subrogation, or the Owner's giving such a waiver, would constitute a breach of its insurance policy; then as to the Owner this Section 11.3.7 shall be of no force or effect and no such waiver of subrogation shall be required of Owner.

**§ 11.3.8** A loss insured under the Owner's property insurance 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 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** The Owner, as fiduciary, shall have the power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the Owner's exercise of this power.

**§ 11.3.10** All insurance policies maintained by the Contractor shall include a waiver of any and all rights of subrogation of the Contractor or its Insurers against the Owner and Architect, along with all other Additional Insureds/Indemnified Parties and their agents, officers, directors and employees for recovery of damages. Contractor further waives its right of subrogation against the Owner or any Additional Insured or Indemnified Party for any damage or loss to the Contractor's scope of work, tools, equipment, materials or any other loss within the scope of any insurance maintained by the Owner.

#### **§ 11.4 Performance Bond and Payment Bond**

**§ 11.4.1** As required in the Invitation and Instructions to Bidders, the Contractor shall furnish a Performance Bond and Payment Bond, each in an amount equal to one hundred percent (100%) of the Contract Sum, meeting all statutory requirements of the State of New York, in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

1. Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment;

2. The cost of the required bonds shall be included in the Contract Sum;
3. Bonds shall be executed by a responsible surety licensed in the Jurisdiction of the Work with a Best's rating of no less than A/XII and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer;
4. The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum;
5. The Contractor shall require the attorney in fact who executes the required bond on behalf of the surety to affix thereof a certified and current copy of his power of attorney indicating the monetary limit of such power;
6. Every Bond under this Section 11.4.1 must display the Surety Bond Number. A rider including the following provisions shall be attached to each Bond:
  1. Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Such addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.
  2. Surety further agrees that in event of any default by the Owner in the performance of the Owner's obligations to the Contractor under the Contract, the Contractor or Surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner, and the Owner shall have thirty (30) days from time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified registered U.S. Mail, return receipt requested, first class postage prepaid, to the Architect and the Owner.
7. Notwithstanding anything to the contrary set forth in the Contract Documents, the Performance Bond shall not contain a condition that any meeting must be scheduled among Owner, Contractor and its surety, or any combination of them, prior to Owner declaring Contractor in default or prior to Owner terminating Contractor's Contract. Any such language in a Performance Bond shall be null, void and unenforceable.

**§ 11.4.2** 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.

**§ 11.4.3** The Contractor shall deliver the required bonds to the Owner prior to beginning construction activity at the site, but no later than seven (7) days after execution of the Contract. Said bond shall be issued on form AIA Document A312.

**§ 11.4.4** The Owner may, in the Owner's sole discretion and without prior notice to the Contractor, inform surety of the progress of the Contractor's Work and obtain consents as necessary to protect the Owner's rights, interest, privileges of the Contractor's Work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Contractor's Work.

**§ 11.4.5** If the surety on any Bond furnished by the Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of this Article, the Contractor shall within ten (10) days thereafter substitute another Performance and Payment Bond and surety, both of which must be acceptable to the Owner.

**§ 11.4.6** The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material required by the surety. The Owner, Construction Manager and Architect shall be notified by the Contractor, in writing, of all communications with the surety. The Owner may, in the Owner's sole discretion, inform surety, through the Construction Manager, of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Work.

**§ 11.5** Effect of Procurement of Insurance- Neither the procurement nor the maintenance of any type of insurance by the Owner or the Contractor shall in any way be construed or be deemed to limit, discharge, waive or release the Contractor from any of the obligations and risks imposed upon him by the Contract or to be a limitation on the

nature or extent of such obligations or risks.

**§ 11.6 No Third Party** - Nothing in the Contract shall create or give to third parties any claim or right of action against the Contractor, Architect, Construction Manager or Owner beyond such as may legally exist irrespective of the Contract.

## **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 observation and be replaced at the Contractor's expense without change in the Contract Time, or Contract Sum.

**§ 12.1.2** If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before or After Substantial Completion**

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor or anyone for whom wither is responsible damages any portion of the Work or premises, including without limitation, mechanical electrical, plumbing and other building systems, machinery, equipment or other mechanical devices, the Contractor shall cause such item(s) to be restored to 'like new' condition at no expense to the Owner.

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

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within 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 an 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 written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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