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## **BID ADDENDUM #3**

**Nanuet Union Free School District  
103 Church Street  
Nanuet, NY 10954**

***Nanuet Bond Projects Phase 5***

**Date: January 31, 2025**

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## **NOTICE TO CONTRACTORS**

This Addendum issued prior to receipt of Bid shall and does hereby become a part of the Construction Documents for the above project.

All principal Contractors shall be responsible for seeing that their Subcontractors are properly apprised of the contents of this Addendum.

All information contained in this Addendum shall supersede and shall take precedence over any conflicting information in the original Bidding Documents dated **January 14, 2025**. and all previous addenda.

All Contractors shall acknowledge receipt of this Addendum in the space provided in the Bid Form. Failure to do so may subject Bidder to disqualification.

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### **CLARIFICATIONS:**

1. Please see missing spec sections from the bid documents below:

### **CHANGES TO SPECIFICATIONS:**

#### **00 01 10 – TABLE OF CONTENTS**

Updated to reflect missing spec sections.

#### **00 10 01 – A701 – 2018 INSTRUCTIONS TO BIDDERS**

Missing in bid documents. See attached specification.

#### **00 30 06 - A305-2020**

Missing in bid documents. See attached specification.

#### **00 31 10 - A310-2010 - Bid Bond Working**

Missing in bid documents. See attached specification.

#### **00 45 22 - Sexual Harassment Prevention Certification Form**

Missing in bid documents. See attached specification.

#### **00 48 00 - NON COLLUSIVE CERTIFICATION**

Missing in bid documents. See attached specification.

#### **00 48 01 - GENERAL MUNICIPAL LAW**

Missing in bid documents. See attached specification.

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**00 48 01.1 - Declaration of Bidders Inability to Provide Certification of Compliance  
with Iran Divestment Act**

Missing in bid documents. See attached specification.

**00 48 06 - Wage Determination Schedule-Paper clip**

Missing in bid documents. See attached specification.

**00 48 08 - A132-2019**

Missing in bid documents. See attached specification.

**00 48 09 - A232-2019**

Missing in bid documents. See attached specification.

**00 83 20 - G716-2004 - Form RFI**

Missing in bid documents. See attached specification.

**00 83 60 - A312 - PERFORMANCE BOND-2010 - Final**

Missing in bid documents. See attached specification.

**00 90 01 - RESCUE REGULATIONS**

Missing in bid documents. See attached specification.

**01 32 33 - PHOTOGRAPHIC DOCUMENTATION**

Missing in bid documents. See attached specification.

**01 42 00 – REFERENCES**

Missing in bid documents. See attached specification.

**01 45 00 - QUALITY REQUIREMENTS**

Missing in bid documents. See attached specification.

**01 60 00- PRODUCT REQUIREMENTS**

Missing in bid documents. See attached specification.

**REVISIONS TO DRAWINGS:**

**ARCHITECTURAL**

**1. Sheet HE-A101: 1<sup>ST</sup> FLOOR PLAN**

- a. Updated to make new work plan notes legible.

**STRUCTURAL**

None

**MECHANICAL**

None

**ELECTRICAL**

None

**PLUMBING**

None

## **SECTION 00 01 10 - TABLE OF CONTENTS**

### **DIVISION 0 - BIDDING DOCUMENTS, CONTRACTS AND CONDITIONS**

00 00 00	COVER
00 01 10	TABLE OF CONTENTS
00 03 00	NOTICE TO BIDDERS
	LIST OF DRAWINGS (REFER TO DRAWINGS COVER SHEET)
00 03 01	REQUEST FOR CLARIFICATION
**	INSTRUCTIONS TO BIDDERS (AIA DOC. A701, 2018 EDITION)
00 30 01	GC-01 BID FORM
00 30 02	EC-01 BID FORM
00 30 03	MC-01 BID FORM
00 30 04	PC-01 BID FORM
**	CONTRACTORS QUALIFICATION STATEMENT (AIA DOC. A305 – 2020 EDITION)
**	BID BOND (AIA DOC. A310 - 2010 EDITION)
00 31 13	PRELIMINARY SCHEDULES
00 43 25	SUBSTITUTION REQUEST FORM
00 43 36	PROPOSED SUBCONTRACTOR FORM
00 45 22	SEXUAL HARASSMENT PREVENTION CERTIFICATION
00 45 43	CORPORATE RESOLUTIONS
00 48 00	NON-COLLUSIVE BIDDING CERTIFICATION
00 48 01	GENERAL MUNICIPAL LAW "IRANIAN ENERGY SECTOR DIVESTMENT"
00 48 01.1	DECLARATION OF BIDDER'S
00 48 06	WAGE DETERMINATION SCHEDULE
**	STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR, CONSTRUCTION MANAGER AS ADVISOR (AIA DOCUMENT A132-2009)
**	GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, CONSTRUCTION MANAGER AS ADVISOR (AIA DOC. A232-2009)
00 73 20	INSURANCE CERTIFICATION FORM
00 83 20	REQUESTS FOR INFORMATION (AIA G716-2004)
00 83 50	LABOR RATE SHEET
00 90 00	NY SED 155.5 REGULATIONS
00 90 01	RESCUE REGULATIONS (EXCERPT OF CONTRACTOR'S RESPONSIBILITIES)

### **DIVISION 1 - GENERAL REQUIREMENTS**

01 10 00	MULTIPLE PRIME CONTRACTS
01 11 00	MILESTONE SCHEDULE
01 12 02	CONTRACT SUMMARY- GC-01
01 12 03	CONTRACT SUMMARY- MC-01
01 12 04	CONTRACT SUMMARY- EC-01
01 12 05	CONTRACT SUMMARY- PC-01
01 21 00	ALLOWANCES
01 22 00	UNIT PRICES
01 23 00	ALTERNATES
01 25 00	SUBSTITUTION PROCEDURES
01 26 00	MODIFICATION PROCEDURES
01 29 00	PAYMENT PROCEDURES
01 31 00	PROJECT MANAGEMENT AND COORDINATION
01 31 19	PROJECT MEETINGS
01 31 50	SAFETY AND HEALTH
01 32 33	PHOTOGRAPHIC DOCUMENTATION
01 33 00	ELECTRONIC SUBMITTAL PROCEDURES

01 33 01	SUBMITTAL COVER PAGE
01 42 00	REFERENCES
01 45 00	QUALITY REQUIREMENTS

01 50 00	TEMPORARY FACILITIES AND CONTROLS
01 60 00	PRODUCT REQUIREMENTS
01 73 29	CUTTING AND PATCHING
01 74 23	CLEANING UP
01 77 00	EXECUTION AND CLOSEOUT REQUIREMENTS
01 77 01	CHECKLIST FOR PROJECT CLOSEOUT
01 78 23	OPERATIONS AND MAINTENANCE
01 78 36	WARRANTIES
01 83 25	REQUEST FOR SHUTDOWN
01 83 40	DAILY REPORT COVER
01 83 70	TWO WEEK LOOK AHEAD SCHEDULE
01 84 70	SUBMITTAL SCHEDULE

## **DIVISION 2 - EXISTING CONDITIONS**

02 41 00	SELECTIVE DEMOLITION
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## **DIVISION 3 – CONCRETE**

03 30 01	CAST IN PLACE CONCRETE
03 54 00	SELF LEVELING TOPPING

## **DIVISION 4 – MASONRY**

04 01 20	MAINTENANCE AND RESTORATION OF BRICK MASONRY
04 03 05.13	RESTORATION MORTARS
04 03 05.16	RESTORATION MASONRY REPOINTING
04 22 00	CONCRETE UNIT MASONRY

## **DIVISION 5 – METALS**

05 12 00	STRUCTURAL STEEL
05 31 00	STEEL DECKING
05 40 00	COLD FORMED METAL FRAMING
05 50 00	METAL FABRICATIONS
05 52 13	PIPE AND TUBE RAILINGS

## **DIVISION 6 - WOODS AND PLASTICS**

06 10 00	ROUGH CARPENTRY
06 16 00	SHEATHING
06 40 23	INTERIOR ARCHITECTURAL WOODWORK

## **DIVISION 7 - THERMAL AND MOISTURE PROTECTION**

07 01 50.16	MAINTENANCE CLEANING OF MEMBRANE ROOFING
07 01 50.71	REHABILITATION OF METAL ROOFING
07 01 50.73	REHABILITATION OF MODIFIED BITUMINOUS ROOFING

07 13 26	SELF-ADHERING SHEET WATERPROOFING
07 21 00	THERMAL INSULATION
07 27 13	FIRE RESISTANT SELF-ADHERING MEMBRANE AIR BARRIERS
07 42 13	COMPOSITE METAL PANELS
07 56 00.13	FLUID-APPLIED NEW ROOF ASSEMBLY, INSULATED FOR NEW ROOF
07 62 00	SHEET METAL FLASHING AND TRIM-
07 84 13	PENETRATION FIRESTOPPING
07 84 46	FIRE-RESISTIVE JOINT SYSTEMS
07 92 00	JOINT SEALANT
07 95 00	EXPANSION CONTROL

#### **DIVISION 8 – OPENINGS**

08 11 13	HOLLOW METAL DOORS AND FRAMES
08 11 16	FIRE RATED ALUMINUM FULL VISION DOORS AND FRAMES
08 14 16	FLUSH WOOD DOORS
08 31 13	ACCESS DOORS AND FRAMES
08 41 13	ALUMINUM FRAMED ENTRANCES AND STOREFRONTS
08 56 71	BULLET-RESISTANT TRANSACTION WINDOW
08 71 00	DOOR HARDWARE
08 80 00	GLAZING
08 83 00	MIRRORS
08 87 17	SAFETY AND SECURITY GLAZING FILMS

#### **DIVISION 9 – FINISHES**

09 22 16	NON-STRUCTURAL METAL FRAMING
09 29 00	GYPSON BOARD
09 30 13	CERAMIC TILE
09 51 23	ACOUSTICAL CEILING TILE
09 65 13	RESILIENT BASE AND ACCESSORIES
09 65 19	RESILIENT FLOORING
09 67 23	RESINOUS FLOORING
09 72 20	WALL COVERINGS
09 91 00	PAINTING

#### **DIVISION 10 – SPECIALTIES**

10 14 00	INTERIOR SIGNAGE
10 21 00	TOILET PARTITIONS
10 28 00	TOILET AND BATH ACCESSORIES
10 44 13	FIRE EXTINGUISHER CABINETS
10 44 16	FIRE EXTINGUISHERS

#### **DIVISION 11 – EQUIPMENT**

11 16 00	BULLET RESISTANT FIBERGLASS PANELS
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#### **DIVISION 12 – FURNISHINGS**

12 36 61      SIMULATED STONE COUNTERTOPS  
12 48 13      ENTRANCE MATS AND FRAMES

**DIVISION 13 – SPECIAL CONSTRUCTION- NOT USED**

**DIVISION 14 – CONVEYING EQUIPMENT**

14 42 00      WHEELCHAIR LIFT

**Division 21 – FIRE SUPPRESSION**

210500      COMMON WORK RESULTS FOR FIRE SUPPRESSION  
211300      FIRE SUPPRESSION SPRINKLERS

**DIVISION 22 – PLUMBING**

22 05 01      BASIC PLUMBING MATERIALS AND METHODS  
22 05 53      IDENTIFICATION FOR PLUMBING PIPING AND EQUIPMENT  
22 07 19      PLUMBING PIPING INSULATION  
22 10 05      PLUMBING PIPING  
22 10 06      PLUMBING PIPING SPECIALTIES  
22 40 00      PLUMBING FIXTURES

**DIVISION 23 – HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)**

23 05 01      BASIC HVAC MATERIALS AND METHODS  
23 05 16      EXPANSION FITTINGS AND LOOPS FOR HVAC PIPING  
23 05 19      METERS AND GAUGES FOR HVAC PIPING  
23 05 48      VIBRATION CONTROLS FOR HVAC PIPING AND EQUIPMENT  
23 05 53      IDENTIFICATION FOR HVAC PIPING AND EQUIPMENT  
23 05 93      TESTING, ADJUSTING, AND BALANCING FOR HVAC  
23 07 13      DUCT INSULATION  
23 07 16      HVAC EQUIPMENT INSULATION  
23 07 19      HVAC PIPING INSULATION  
23 09 23      DIRECT-DIGITAL CONTROL SYSTEM FOR HVAC  
23 21 13      HYDRONIC PIPING  
23 21 14      HYDRONIC SPECIALTIES  
23 21 23      HYDRONIC PUMPS  
23 23 00      REFRIGERANT PIPING  
23 25 00      HVAC WATER TREATMENT  
23 31 00      HVAC DUCTS AND CASINGS  
23 33 00      AIR DUCT ACCESSORIES  
23 34 23      HVAC POWER VENTILATORS  
23 37 00      AIR OUTLETS AND INLETS  
23 51 00      BREECHINGS, CHIMNEYS, AND STACKS  
23 52 16      CONDENSING BOILERS  
23 81 26      SMALL-CAPACITY SPLIT-SYSTEM AIR CONDITIONERS  
23 81 29      VARIABLE REFRIGERANT FLOW HVAC SYSTEMS  
23 82 00      CONVECTION HEATING AND COOLING UNITS

**DIVISION 26 – ELECTRICAL**

26 05 05      SELECTIVE DEMOLITION FOR ELECTRICAL  
26 05 19      LOW-VOLTAGE ELECTRICAL POWER CONDUCTORS AND CABLES

26 05 26	GROUNDING AND BONDING FOR ELECTRICAL SYSTEMS
26 05 29	HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS
26 05 33.13	CONDUIT FOR ELECTRICAL SYSTEMS
26 05 33.16	BOXES FOR ELECTRICAL SYSTEMS
26 05 33.23	SURFACE RACEWAYS FOR ELECTRICAL SYSTEMS
26 05 53	IDENTIFICATION FOR ELECTRICAL SYSTEMS
26 09 23	LIGHTING CONTROL DEVICES
26 24 16	PANELBOARDS
26 24 21	CIRCUIT BREAKERS FOR EXISTING PANELBOARDS
26 27 26	WIRING DEVICES
26 28 16.16	ENCLOSED SWITCHES
26 51 00	INTERIOR LIGHTING

**DIVISION 27 – COMMUNICATIONS**

27 10 00	STRUCTURED CABLING-VOICE AND DATA- INSIDE
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**DIVISION 28 – ELECTRONIC SAFETY AND SECURITY**

28 46 00	FIRE DETECTION AND ALARM
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**DIVISION 31 –34- NOT USED**

**END OF SECTION 00 01 10**

# AIA® Document A701® – 2018

## Instructions to Bidders

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

**Project Name:** NANUET BOND PROJECTS PHASE 5  
HIGHVIEW ELEMENTARY SCHOOL: 50-01-08-03-0-002-020  
BARR MIDDLE SCHOOL: 50-01-08-03-0-004-022  
MILLER ELEMENTARY SCHOOL: 50-01-08-03-0-001-026  
MAINTENANCE BUILDING: 50-01-08-03-7-007-002  
OUTDOOR EDUCATION CENTER: 50-01-08-03-7-012-004

### THE OWNER:

(Name, legal status, address, and other information)

Nanuet Union Free School District  
101 Church Street  
Nanuet, N.Y. 10954

### THE ARCHITECT:

(Name, legal status, address, and other information)

KSQ Architects  
215 W 40<sup>th</sup> Street  
Floor 15  
New York, NY 10018  
T. 914.682.3700

### TABLE OF ARTICLES

1	DEFINITIONS
2	BIDDER'S REPRESENTATIONS
3	BIDDING DOCUMENTS
4	BIDDING PROCEDURES
5	CONSIDERATION OF BIDS
6	POST-BID INFORMATION
7	PERFORMANCE BOND AND PAYMENT BOND
8	ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

### 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.

FEDERAL, STATE, AND LOCAL LAWS MAY IMPOSE REQUIREMENTS ON PUBLIC PROCUREMENT CONTRACTS. CONSULT LOCAL AUTHORITIES OR AN ATTORNEY TO VERIFY REQUIREMENTS APPLICABLE TO THIS PROCUREMENT BEFORE COMPLETING THIS FORM.

It is intended that AIA Document G612™–2017, Owner's Instructions to the Architect, Parts A and B will be completed prior to using this document.



## **ARTICLE 1 DEFINITIONS**

§ 1.1 Bidding Documents include the Bidding Requirements and the Proposed Contract Documents. The Bidding Requirements consist of the advertisement or invitation to bid, Instructions to Bidders, supplementary instructions to bidders, the bid form, and any other bidding forms. The Proposed Contract Documents consist of the unexecuted form of Agreement between the Owner and Contractor and that Agreement's Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda, and all other documents enumerated in Article 8 of these Instructions.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, or in other Proposed Contract Documents apply to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect, which, by additions, deletions, clarifications, or corrections, modify or interpret the Bidding Documents.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents, to which Work may be added or deleted by sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from, or that does not change, the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment, or services, or a portion of the Work, as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment, or labor for a portion of the Work.

## **ARTICLE 2 BIDDER'S REPRESENTATIONS**

§ 2.1 By submitting a Bid, the Bidder represents that:

- .1 the Bidder has read and understands the Bidding Documents;
- .2 the Bidder understands how the Bidding Documents relate to other portions of the Project, if any, being bid concurrently or presently under construction;
- .3 the Bid complies with the Bidding Documents;
- .4 the Bidder has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Bidder's observations with the requirements of the Proposed Contract Documents;
- .5 the Bid is based upon the materials, equipment, and systems required by the Bidding Documents without exception; and
- .6 the Bidder has read and understands the provisions for liquidated damages, if any, set forth in the form of Agreement between the Owner and Contractor.

## **ARTICLE 3 BIDDING DOCUMENTS**

### **§ 3.1 Distribution**

§ 3.1.1 Bidders shall obtain complete Bidding Documents, as indicated below, from the issuing office designated in the advertisement or invitation to bid, for the deposit sum, if any, stated therein.

*(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall obtain Bidding Documents.)*

**§ 3.1.2** Any required deposit shall be refunded to Bidders who submit a bona fide Bid and return the paper Bidding Documents in good condition within ten days after receipt of Bids. The cost to replace missing or damaged paper documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the paper Bidding Documents, and the Bidder's deposit will be refunded.

**§ 3.1.3** Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the advertisement or invitation to bid, or in supplementary instructions to bidders.

**§ 3.1.4** Bidders shall use complete Bidding Documents in preparing Bids. Neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete Bidding Documents.

**§ 3.1.5** The Bidding Documents will be available for the sole purpose of obtaining Bids on the Work. No license or grant of use is conferred by distribution of the Bidding Documents.

**§ 3.2 Modification or Interpretation of Bidding Documents**

**§ 3.2.1** The Bidder shall carefully study the Bidding Documents, shall examine the site and local conditions, and shall notify the Architect of errors, inconsistencies, or ambiguities discovered and request clarification or interpretation pursuant to Section 3.2.2.

**§ 3.2.2** Requests for clarification or interpretation of the Bidding Documents shall be submitted by the Bidder in writing and shall be received by the Architect at least seven days prior to the date for receipt of Bids.  
*(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall submit requests for clarification and interpretation.)*

**§ 3.2.3** Modifications and interpretations of the Bidding Documents shall be made by Addendum. Modifications and interpretations of the Bidding Documents made in any other manner shall not be binding, and Bidders shall not rely upon them.

**§ 3.3 Substitutions**

**§ 3.3.1** The materials, products, and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution.

**§ 3.3.2 Substitution Process**

**§ 3.3.2.1** Written requests for substitutions shall be received by the Architect at least ten days prior to the date for receipt of Bids. Requests shall be submitted in the same manner as that established for submitting clarifications and interpretations in Section 3.2.2.

**§ 3.3.2.2** Bidders shall submit substitution requests on a Substitution Request Form if one is provided in the Bidding Documents.

**§ 3.3.2.3** If a Substitution Request Form is not provided, requests shall include (1) the name of the material or equipment specified in the Bidding Documents; (2) the reason for the requested substitution; (3) a complete description of the proposed substitution including the name of the material or equipment proposed as the substitute, performance and test data, and relevant drawings; and (4) any other information necessary for an evaluation. The request shall include a statement setting forth changes in other materials, equipment, or other portions of the Work, including changes in the work of other contracts or the impact on any Project Certifications (such as LEED), that will result from incorporation of the proposed substitution.

**§ 3.3.3** The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

**§ 3.3.4** If the Architect approves a proposed substitution prior to receipt of Bids, such approval shall be set forth in an Addendum. Approvals made in any other manner shall not be binding, and Bidders shall not rely upon them.

§ 3.3.5 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

#### § 3.4 Addenda

§ 3.4.1 Addenda will be transmitted to Bidders known by the issuing office to have received complete Bidding Documents.

*(Indicate how, such as by email, website, host site/platform, paper copy, or other method Addenda will be transmitted.)*

§ 3.4.2 Addenda will be available where Bidding Documents are on file.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids, except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Prior to submitting a Bid, each Bidder shall ascertain that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

### ARTICLE 4 BIDDING PROCEDURES

#### § 4.1 Preparation of Bids

§ 4.1.1 Bids shall be submitted on the forms included with or identified in the Bidding Documents.

§ 4.1.2 All blanks on the bid form shall be legibly executed. Paper bid forms shall be executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and numbers, unless noted otherwise on the bid form. In case of discrepancy, the amount entered in words shall govern.

§ 4.1.4 Make no erasures, cross-outs, whiteouts, write-overs, obliterations, or changes of any kind in the Bid Form phraseology, in the entry of unit prices, or anywhere on the Bid form. Fill in all blanks spaces legibly. An illegible entry may disqualify the bid in its entirety. If a mistake is made, use a new Bid Form. No post bid meetings will be afforded to any bidder to explain or clarify illegible or changed entries.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change" or as required by the bid form.

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall neither make additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name and legal status of the Bidder. As part of the documentation submitted with the Bid, the Bidder shall provide evidence of its legal authority to perform the Work in the jurisdiction where the Project is located. Each copy of the Bid shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further name the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached, certifying the agent's authority to bind the Bidder.

§ 4.1.8 A Bidder shall incur all costs associated with the preparation of its Bid.

#### § 4.2 Bid Security

§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. Each Bid shall be accompanied by the following bid security:

*(Insert the form and amount of bid security.)*

Five Percent (5%) of the contract sum of work

**§ 4.2.2** The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and shall, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. In the event the Owner fails to comply with Section 6.2, the amount of the bid security shall not be forfeited to the Owner.

**§ 4.2.3** If a surety bond is required as bid security, it shall be written on AIA Document A310™, Bid Bond, unless otherwise provided in the Bidding Documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of an acceptable power of attorney. The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 4.2.4** The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until (a) the Contract has been executed and bonds, if required, have been furnished; (b) the specified time has elapsed so that Bids may be withdrawn; or (c) all Bids have been rejected. However, if no Contract has been awarded or a Bidder has not been notified of the acceptance of its Bid, a Bidder may, beginning days after the opening of Bids, withdraw its Bid and request the return of its bid security.

### **§ 4.3 Submission of Bids**

**§ 4.3.1** A Bidder shall submit its Bid as indicated below:

*(Indicate how, such as by website, host site/platform, paper copy, or other method Bidders shall submit their Bid.)*

#### **Paper Copy**

**§ 4.3.2** Paper copies of the Bid, the bid security, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address, and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

**§ 4.3.3** Bids shall be submitted by the date and time and at the place indicated in the invitation to bid. Bids submitted after the date and time for receipt of Bids, or at an incorrect place, will not be accepted.

**§ 4.3.4** The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

**§ 4.3.5** A Bid submitted by any method other than as provided in this Section 4.3 will not be accepted.

### **§ 4.4 Modification or Withdrawal of Bid**

**§ 4.4.1** Prior to the date and time designated for receipt of Bids, a Bidder may submit a new Bid to replace a Bid previously submitted, or withdraw its Bid entirely, by notice to the party designated to receive the Bids. Such notice shall be received and duly recorded by the receiving party on or before the date and time set for receipt of Bids. The receiving party shall verify that replaced or withdrawn Bids are removed from the other submitted Bids and not considered. Notice of submission of a replacement Bid or withdrawal of a Bid shall be worded so as not to reveal the amount of the original Bid.

**§ 4.4.2** Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids in the same format as that established in Section 4.3, provided they fully conform with these Instructions to Bidders. Bid security shall be in an amount sufficient for the Bid as resubmitted.

**§ 4.4.3** After the date and time designated for receipt of Bids, a Bidder who discovers that it made a clerical error in its Bid shall notify the Architect of such error within two days, or pursuant to a timeframe specified by the law of the jurisdiction where the Project is located, requesting withdrawal of its Bid. Upon providing evidence of such error to the reasonable satisfaction of the Architect, the Bid shall be withdrawn and not resubmitted. If a Bid is withdrawn pursuant to this Section 4.4.3, the bid security will be attended to as follows:

*(State the terms and conditions, such as Bid rank, for returning or retaining the bid security.)*

## **ARTICLE 5 CONSIDERATION OF BIDS**

### **§ 5.1 Opening of Bids**

If stipulated in an advertisement or invitation to bid, or when otherwise required by law, Bids properly identified and received within the specified time limits will be publicly opened and read aloud. A summary of the Bids may be made available to Bidders.

### **§ 5.2 Rejection of Bids**

Unless otherwise prohibited by law, the Owner shall have the right to reject any or all Bids.

### **§ 5.3 Acceptance of Bid (Award)**

**§ 5.3.1** It is the intent of the Owner to award a Contract to the lowest responsive and responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. Unless otherwise prohibited by law, the Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's best interests.

**§ 5.3.2** Unless otherwise prohibited by law, the Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the lowest responsive and responsible Bidder on the basis of the sum of the Base Bid and Alternates accepted.

**§5.3.3** A tie-bid is defined as an instance where bids are received from two or more Bidders who are the low responsive Bidders, and their offers are identical. It is the policy of the District to settle the outcome of tie-bids by either drawing a name from a hat or flipping a coin within 24 hours of the bid opening. All affected firms will be notified of the tie, the time and place of the resolution of the tie and shall be invited to witness the outcome. Attendance is not mandatory. The drawing/flip will be held at the District Administration Office. Two impartial witnesses will be provided and shall be present. All attendees will acknowledge the results of the tie-breaker on the bid tabulation sheet. All firms affected by the bids will be notified of the results. The results pursuant to this provision shall be considered final.

**§5.3.4** All bids must be accompanied by:

- Fully complete bid form
- Bid Bond
- Non-Collusive Certification
- Iran Divestment Certification
- Corporate Resolutions
- Substitution List
- List of Subcontractors
- Unit pricing (if applicable)
- Schedule of Values (filled out fields on bid form)
- Insurance certification accompanied by Accord form. (All carriers for policies must be **licensed and admitted** in New York State) – See AIA 232 for more details.

Failure to provide all these documents will be grounds for bid disqualification.

## **ARTICLE 6 POST-BID INFORMATION**

### **§ 6.1 Contractor's Qualification Statement**

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request and within the timeframe specified by the Architect, a properly executed AIA Document A305™, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted for this Bid.

**§ 6.2** The apparent low bidder must submit the required pre-award submittal package described below to the Owner and Architect within 48 hours after the bids are opened.

Nanuet Union Free School District

Rudy Villanyi, Director of School Facilities  
Email: [rvillanyi@nanuetsd.org](mailto:rvillanyi@nanuetsd.org)

KSQ Design  
Areej Sabzwari  
Email: [asabzwari@ksq.design](mailto:asabzwari@ksq.design)  
215 W 40<sup>th</sup> Street  
15<sup>th</sup> Floor  
New York, NY 10018

Submissions must be emailed and must include the Project Name of this contract in the Subject Line of the Pre-Award submission email.

- (1) Pre-award Submittal Package
  - (i) Fully execute AIA A305 Contractors Qualification Statement
  - (ii) Most recent financial statement by CPM
  - (iii) References and experience:
    1. List of all past contracts with K12 Public School Districts
    2. Provide three (3) references (Name, Title, and Phone Number) associated with three (3) different projects (public or private sector) of similar scope and size to the one identified in this contract. Additionally, include the names of two major suppliers used for each of these three (3) projects.
- (2) Workforce and Work Plan – Provide a detailed written Work Plan which shall demonstrate the contractor’s understanding of overall project scope and shall include, but not be limited, to the following:
  - (i) Sequential listing of specific project activities required to successfully complete the Work of the contract.
    1. Include Critical Milestones,
    2. Include phasing of the Work, if required.
    3. Include listing of long lead items.
    4. Impact of weather and restricted work period(s).
    5. Statement that the project can be completed in established time.
  - (ii) Resumes for Contractor’s proposed supervisory staff, including qualifications for specialized expertise or any certification(s) required to perform the Work.
  - (iii) Names of proposed major sub-contractors (more than 15% of the bid amount) and a listing of the related trade of work and value.
  - (iv) Any special coordination requirements with other trades.
  - (v) Any special storage and staging requirements for construction materials.
  - (vi) Any other special requirements.
- (3) Detailed Cost Estimate:
  - (i) A copy of a Detailed Cost Estimate outlined in CSI format.

### § 6.3 Submittals

§ 6.3.1 After notification of selection for the award of the Contract, the Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, submit in writing to the Owner through the Architect:

- .1 a designation of the Work to be performed with the Bidder’s own forces;
- .2 names of the principal products and systems proposed for the Work and the manufacturers and suppliers of each; and
- .3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

§ 6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, withdraw the Bid or submit an acceptable substitute person or entity. The Bidder may also submit any required adjustment in the Base Bid or Alternate Bid to account for the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

## **ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND**

### **§ 7.1 Bond Requirements**

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 7.1.4 Unless otherwise indicated below, the Penal Sum of the Payment and Performance Bonds shall be the amount of the Contract Sum.

*(If Payment or Performance Bonds are to be in an amount other than 100% of the Contract Sum, indicate the dollar amount or percentage of the Contract Sum.)*

### **§ 7.2 Time of Delivery and Form of Bonds**

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to commence sooner in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix to the bond a certified and current copy of the power of attorney.

## **ARTICLE 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS**

§ 8.1 Copies of the proposed Contract Documents have been made available to the Bidder and consist of the following documents:

- .1 AIA Document A132™–2009, Standard Form of Agreement Between Owner and Contractor, unless otherwise stated below.

*(Insert the complete AIA Document number, including year, and Document title.)*

- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds, unless otherwise stated below.

*(Insert the complete AIA Document number, including year, and Document title.)*

.3 AIA Document A232™–2019, General Conditions of the Contract for Construction, unless otherwise stated below.  
(Insert the complete AIA Document number, including year, and Document title.)

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013.)

.5 Drawings

Number	Title	Date
--------	-------	------

.6 Specifications

Section	Title	Date	Pages
---------	-------	------	-------

.7 Addenda:

Number	Date	Pages
--------	------	-------

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

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017.)

☐ The Sustainability Plan:

Title	Date	Pages
-------	------	-------

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.9 Other documents listed below:  
(List here any additional documents that are intended to form part of the Proposed Contract Documents.)

## ARTICLE 9 TAXES

### § 9.1 SALES TAX

§ 9.1.1 State and local sales tax on materials incorporated into the construction shall not be included in the Bid. Owner is a tax-exempt organization and will take title to materials used in the Project in order to permit tax exemption.



§ 9.1.2 Owner will furnish certificate with Owner's Tax Exemption Number to successful Bidder for use in purchasing tangible personal property required for Project.

§ 9.1.3 Tax Exemption does not apply to machinery, equipment, tools, or other items purchased, leased, rented, or otherwise acquired for contractor's use even though machinery, equipment, tools, or other items are used either in part or entirely on Work. Exemption shall apply only to materials fully incorporated into Work of Contract as accepted and approved by Architect.

## **ARTICLE 10 BONDS**

### **§10.1 PERFORMANCE BOND AND PAYMENT BOND**

§ 10.1.1 Successful Bidder shall furnish to Owner bonds covering faithful performance of Contract and payment obligations there under.

§ 10.1.2 Separate payment and performance bonds shall be furnished for each contract. Should a contractor bid multiple contracts. Each contract requires its own individually packaged submission and shall include all contract documents. Any submission consisting of multiple bids packaged as one, could be rejected.

## **ARTICLE 11 EXAMINATION OF THE SITE**

### **§11.1 PRIOR ARRANGEMENTS**

§ 11.1.1 Bidders may visit the existing facilities by making prior arrangements with Mr. Rudy Villanyi, Director of Facilities, telephone 845-627-9852.

## **ARTICLE 12 SUBSTITUTIONS OF MATERIALS AND EQUIPMENT**

### **§12.1 EQUIVALENCY CLAUSE**

§ 12.1.1 Whenever a material, article, or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturers' or vendors' names, trade 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 will 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, and function. It shall not be purchased or installed by the Contractor without the Architect's written approval.

# Additions and Deletions Report for AIA® Document A701® – 2018

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

### NANUET UNION FREE SCHOOL DISTRICT

Project Name: NANUET BOND PROJECTS PHASE 5

HIGHVIEW ELEMENTARY SCHOOL: 50-01-08-03-0-002-020

BARR MIDDLE SCHOOL: 50-01-08-03-0-004-022

MILLER ELEMENTARY SCHOOL: 50-01-08-03-0-001-026

MAINTENANCE BUILDING: 50-01-08-03-7-007-002

OUTDOOR EDUCATION CENTER: 50-01-08-03-7-012-004

Nanuet Union Free School District

101 Church Street

Nanuet, N.Y. 10954

...

KSQ Architects

215 W 40<sup>th</sup> Street

Floor 15

New York, NY 10018

T. 914.682.3700

## PAGE 4

~~§ 4.1.4 Edits to entries made on paper bid forms must be initialed by the signer of the Bid. Make no erasures, cross-outs, whiteouts, write-overs, obliterations, or changes of any kind in the Bid Form phraseology, in the entry of unit prices, or anywhere on the Bid form. Fill in all blanks spaces legibly. An illegible entry may disqualify the bid in its entirety. If a mistake is made, use a new Bid Form. No post bid meetings will be afforded to any bidder to explain or clarify illegible or changed entries.~~

...

§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. Each Bid shall be accompanied by the following bid security:

## PAGE 5

Five Percent (5%) of the contract sum of work

...

Paper Copy

§5.3.3 A tie-bid is defined as an instance where bids are received from two or more Bidders who are the low responsive Bidders, and their offers are identical. It is the policy of the District to settle the outcome of tie-bids by either drawing a name from a hat or flipping a coin within 24 hours of the bid opening. All affected firms will be notified of the tie, the time and place of the resolution of the tie and shall be invited to witness the outcome. Attendance is not mandatory. The drawing/flip will be held at the District Administration Office. Two impartial witnesses will be provided and shall be present. All attendees will acknowledge the results of the tie-breaker on the bid tabulation sheet. All firms affected by the bids will be notified of the results. The results pursuant to this provision shall be considered final.

§5.3.4 All bids must be accompanied by:

- Fully complete bid form
- Bid Bond
- Non-Collusive Certification
- Iran Divestment Certification
- Corporate Resolutions
- Substitution List
- List of Subcontractors
- Unit pricing (if applicable)
- Schedule of Values (filled out fields on bid form)
- Insurance certification accompanied by Accord form. (All carriers for policies must be **licensed and admitted** in New York State) – See AIA 232 for more details.

Failure to provide all these documents will be grounds for bid disqualification.

...

§ 6.2 Owner's Financial Capability The apparent low bidder must submit the required pre-award submittal package described below to the Owner and Architect within 48 hours after the bids are opened.

\_\_\_\_\_  
Nanuet Union Free School District  
Rudy Villanyi, Director of School Facilities  
Email: [rvillanyi@nanuetsd.org](mailto:rvillanyi@nanuetsd.org)

\_\_\_\_\_  
KSQ Design  
Ofe Pearson  
Email: [opearson@ksq.design](mailto:opearson@ksq.design)  
215 W 40<sup>th</sup> Street  
15<sup>th</sup> Floor  
New York, NY 10018

A Bidder to whom award of a Contract is under consideration may request in writing, fourteen days prior to the expiration of the time for withdrawal of Bids, that the Owner furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. The Owner shall then furnish such reasonable evidence to the Bidder no later than seven days prior to the expiration of the time for withdrawal of Bids. Unless such reasonable evidence is furnished within the allotted time, the Bidder will not be required to execute the Agreement between the Owner and Contractor. Submissions must be emailed and must include the Project Name of this contract in the Subject Line of the Pre-Award submission email.

(1) Pre-award Submittal Package

(i) Fully execute AIA A305 Contractors Qualification Statement

- (ii) Most recent financial statement by CPM
- (iii) References and experience:
  - 1. List of all past contracts with K12 Public School Districts
  - 2. Provide three (3) references (Name, Title, and Phone Number) associated with three (3) different projects (public or private sector) of similar scope and size to the one identified in this contract. Additionally, include the names of two major suppliers used for each of these three (3) projects.

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  - 3. Include listing of long lead items.
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  - 5. Statement that the project can be completed in established time.
- (ii) Resumes for Contractor’s proposed supervisory staff, including qualifications for specialized expertise or any certification(s) required to perform the Work.
- (iii) Names of proposed major sub-contractors (more than 15% of the bid amount) and a listing of the related trade of work and value.
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(3) Detailed Cost Estimate:

- (i) A copy of a Detailed Cost Estimate outlined in CSI format.

PAGE 8

- .1 AIA Document A401™–2017, A132™–2009, Standard Form of Agreement Between Owner and Contractor, unless otherwise stated below.

PAGE 9

- .3 AIA Document A201™–2017, A232™–2019, General Conditions of the Contract for Construction, unless otherwise stated below.

...

## **ARTICLE 9 TAXES**

### **§ 9.1 SALES TAX**

**§ 9.1.1** State and local sales tax on materials incorporated into the construction shall not be included in the Bid. Owner is a tax-exempt organization and will take title to materials used in the Project in order to permit tax exemption.

**§ 9.1.2** Owner will furnish certificate with Owner’s Tax Exemption Number to successful Bidder for use in purchasing tangible personal property required for Project.

**§ 9.1.3** Tax Exemption does not apply to machinery, equipment, tools, or other items purchased, leased, rented, or otherwise acquired for contractor’s use even though machinery, equipment, tools, or other items are used either in part or entirely on Work. Exemption shall apply only to materials fully incorporated into Work of Contract as accepted and approved by Architect.

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

***AIA® Document D401™ – 2003***

I, David Short, 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 15:06:55 ET on 02/07/2024 under Order No. 2114442937 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A701™ – 2018, Instructions to Bidders, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



# AIA® Document A305® – 2020

## Contractor's Qualification Statement

**THE PARTIES SHOULD EXECUTE A SEPARATE CONFIDENTIALITY AGREEMENT IF THEY INTEND FOR ANY OF THE INFORMATION IN THIS A305-2020 TO BE HELD CONFIDENTIAL.**

**SUBMITTED BY:**

*(Organization name and address.)*

**SUBMITTED TO:**

*(Organization name and address.)*

**TYPE OF WORK TYPICALLY PERFORMED**

*(Indicate the type of work your organization typically performs, such as general contracting, construction manager as constructor services, HVAC contracting, electrical contracting, plumbing contracting, or other.)*

**THIS CONTRACTOR'S QUALIFICATION STATEMENT INCLUDES THE FOLLOWING:**

*(Check all that apply.)*

- ☐ Exhibit A – General Information
- ☐ Exhibit B – Financial and Performance Information
- ☐ Exhibit C – Project-Specific Information
- ☐ Exhibit D – Past Project Experience
- ☐ Exhibit E – Past Project Experience (Continued)

**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.

**CONTRACTOR CERTIFICATION**

The undersigned certifies under oath that the information provided in this Contractor's Qualification Statement is true and sufficiently complete so as not to be misleading.

\_\_\_\_\_  
Organization's Authorized Representative  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

**NOTARY**

State of:

County of:

Signed and sworn to before me this     day of

\_\_\_\_\_  
Notary Signature

My commission expires:

## ***Additions and Deletions Report for*** ***AIA® Document A305® – 2020***

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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:07:47 ET on 02/07/2024.

*There are no differences.*



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

***AIA® Document D401™ – 2003***

I, David Short, 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 15:07:47 ET on 02/07/2024 under Order No. 2114442937 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A305™ – 2020, Contractor's Qualification Statement, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



# AIA<sup>®</sup> Document A310<sup>™</sup> – 2010

## Bid Bond

### CONTRACTOR:

(Name, legal status and address)

### SURETY:

(Name, legal status and principal place of business)

### OWNER:

(Name, legal status and address)

Nanuet Union Free School District  
101 Church Street  
Nanuet, N.Y. 10954

### BOND AMOUNT: \$

### PROJECT:

(Name, location or address, and Project number, if any)

#### NANUET BOND PROJECTS PHASE 5

HIGHVIEW ELEMENTARY SCHOOL: 50-01-08-03-0-002-020

BARR MIDDLE SCHOOL: 50-01-08-03-0-004-022

MILLER ELEMENTARY SCHOOL: 50-01-08-03-0-001-026

MAINTENANCE BUILDING: 50-01-08-03-7-007-002

OUTDOOR EDUCATION CENTER: 50-01-08-03-7-012-004

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such

### 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.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this    day of    ,

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Contractor as Principal) (Seal)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Surety) (Seal)

\_\_\_\_\_  
(Title)



# **Additions and Deletions Report for**

## **AIA® Document A310™ – 2010**

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**

Nanuet Union Free School District  
101 Church Street  
Nanuet, N.Y. 10954

...

NANUET UNION FREE SCHOOL DISTRICT  
NANUET BOND PROJECTS PHASE 5  
HIGHVIEW ELEMENTARY SCHOOL: 50-01-08-03-0-002-020  
BARR MIDDLE SCHOOL: 50-01-08-03-0-004-022  
MILLER ELEMENTARY SCHOOL: 50-01-08-03-0-001-026  
MAINTENANCE BUILDING: 50-01-08-03-7-007-002  
OUTDOOR EDUCATION CENTER: 50-01-08-03-7-012-004

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

***AIA® Document D401™ – 2003***

I, David Short, 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 15:07:40 ET on 02/07/2024 under Order No. 2114442937 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A310™ – 2010, Bid Bond, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

---

*(Title)*

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*(Dated)*

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SECTION 00 45 22 - SEXUALHARASSMENT PREVENTION CERTIFICATION FORM

By submission of this bid, the person signing on behalf of the bidder certifies, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.

Bidder Name: \_\_\_\_\_

Bidder Address: \_\_\_\_\_

Signature:

\_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## SECTION 00 48 00 - NON-COLLUSIVE CERTIFICATION

### PART 1 - GENERAL

- 1.1 The following provisions of the New York State General Municipal Law form a part of the Bidding Requirements:
- A. By submission of this Bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, under penalty of perjury, that, to the best of his or her knowledge and belief:
    - 1. The prices in this Bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
    - 2. Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
    - 3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
  - B. A Bid shall not be considered for award nor shall any award be made where (A) (1), (2) and (3) above have not been complied with; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall so furnish with the Bid, a signed statement which sets forth in detail the reasons therefore. Where (A) (1), (2) and (3) above have not been complied with, the Bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the Bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.
  - C. The fact that a bidder:
    - 1. has published price lists, rates, or tariffs covering items being procured
    - 2. has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or
    - 3. has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph (A) (1), (2) and
  - D. Any bid hereafter made to any political subdivision of the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.
  - E. The person signing this Bid or Proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the Bidder as well to the person signing in his behalf.



CLOSING: (SIGNATURE) \_\_\_\_\_ (PRINT NAME) \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

E-MAIL: \_\_\_\_\_  
:

**PART 2 - PRODUCTS (Not Applicable)**

**PART 3 - EXECUTION (Not Applicable)**

**END OF SECTION 00 48 00**

**SECTION 00 48 01 – GENERAL MUNICIPAL LAW “IRANIAN ENERGY SECTOR DIVESTMENT”**

The below signed bidder affirms the following as true under penalties of perjury:

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the state finance law.

Corporate or Company Name

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

**END OF SECTION 00 48 01**

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SECTION 00 48 01.1 – DECLARATION OF BIDDER'S INABILITY TO PROVIDE  
CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

Bidders shall complete this form if they cannot certify that the bidder/contractor or any proposed subcontractor is not identified on the Prohibited Entities List. The District reserves the right to undertake any investigation into the information provided herein or to request additional information from the bidder.

Name of the Bidder: \_\_\_\_\_

Address of Bidder: \_\_\_\_\_

Has bidder been involved in investment activities in Iran? \_\_\_\_\_

Describe the type of activities including but not limited to the amounts and the nature of the investments (e.g. banking, energy, real estate)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If so, when did the first investment activity occur? \_\_\_\_\_

Have the investment activities ended? \_\_\_\_\_

If so, what was the date of the last investment activity? \_\_\_\_\_

If not, have the investment activities increased or expanded since April 12, 2012? \_\_\_\_\_

Has the bidder adopted, publicized, or implemented a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran? \_\_\_\_\_

If so, provide the date of the adoption of the plan by the bidder and proof of the adopted resolution, if any, and a copy of the formal plan. \_\_\_\_\_

In detail, state the reasons why the bidder cannot provide the Certification of Compliance with the Iran Divestment Act below (additional pages may be attached):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, deposes and says that he/she is the  
\_\_\_\_\_ of the \_\_\_\_\_ Corporation and the foregoing is  
true and accurate.

\_\_\_\_\_

SIGNED

SWORN to before me this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Notary Public: \_\_\_\_\_

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## SECTION 00 48 06 - WAGE DETERMINATION SCHEDULE

### PART 1 - GENERAL

#### 1.1 NEW YORK STATE DEPARTMENT OF EDUCATION INSTRUCTIONS

- A. Per instructions from the New York State Education Department in "Office of Facilities Planning Newsletter #106 – May 2011" the PRC number can be used by all prospective bidders to see the appropriate wage rates for the Project by following the website link:

Nanuet Bond Projects Phase 5

<https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1559053> or

or PRC# 2023013293

Click on the "Wage Schedule" link near the top of the page.

- B. This process may be used for SED approval and for the actual bidding process.
- C. Prospective bidders must go to the DOL website with the PRC number provided and make certain their bid price is reflective of the actual wage rates for the particular project.
- D. Once the district has identified a low bidder, DOL states that the contract must include the actual wage rates for the project.
- E. (Facilities Planning Newsletters can be found online at:  
<http://www.p12.nysed.gov/facplan/NewsLetters.htm>)

END OF SECTION 00 48 06

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# AIA® Document A132® – 2019

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

**AGREEMENT** made as of the  day of  in the year **2025**  
(In words, indicate day, month and year.)

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

Nanuet School District  
101 Church Street  
Nanuet, NY 10954  
T. 845.343.1481

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

for the following Project:

(Name, location and detailed description)

**NANUET BOND PROJECTS PHASE 5**

HIGHVIEW ELEMENTARY SCHOOL: 50-01-08-03-0-002-020

BARR MIDDLE SCHOOL: 50-01-08-03-0-004-022

MILLER ELEMENTARY SCHOOL: 50-01-08-03-0-001-026

MAINTENANCE BUILDING: 50-01-08-03-7-007-002

OUTDOOR EDUCATION CENTER: 50-01-08-03-7-012-004

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

Jacobs  
500 7<sup>th</sup> Ave, 17<sup>th</sup> Floor  
New York, NY 12601  
T. 646.908.6550

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

KSQ Architects, PC (dba KSQ Design)  
215 West 40<sup>th</sup> Street, 15<sup>th</sup> Floor  
New York, NY 10018  
T. 914.628.3700

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. 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 A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS <i>(Paragraphs deleted)</i>

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, the Bidding Documents, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9. The Contractor represents that it has fully reviewed the Contract Documents and agrees that the Contract Documents describe, to the best of the Contractor's knowledge, the Work necessary to furnish and provide (and that the Contractor shall furnish and provide) a fully functioning Project consistent with the Contract Documents.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. It is the intent of the parties to include within the Work any and all labor, materials, equipment and services that, although not expressly indicated in the Contract Documents, are reasonably inferable therefrom to construct complete and workable systems for the satisfactory performance, execution, final completion and use of the Work and Project.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

#### § 3.1 The date of commencement of the Work shall

*(Paragraphs deleted)*

be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanics' liens and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work. The provisions of this Contract relating to the time for performance and completion of the Work are of the essence of this Contract. Accordingly, time is of the essence respecting the Contract Documents and all obligations thereunder.

Init.

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User Notes:

(1500150117)

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ( ) days from the date of commencement, or as follows:  
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

As per Milestone Schedule Section 011100

Portion of the Work	Substantial Completion Date
---------------------	-----------------------------

, subject to adjustments of this Contract Time as provided in the Contract Documents.  
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

A fine of \$1,000 per calendar day past the date of substantial completion if at no fault of the architect or owner

(Table deleted)

(Paragraphs deleted)

§ 3.4 Time is of the essence in the performance of the Contract Documents, including, without limitation, the Substantial Completion dates established herein. The Contractor shall proceed expeditiously with adequate forces and shall use its best efforts to keep its Work and the Project on schedule, and the Contractor shall achieve the completion times established within the Contract Documents. Milestone dates set forth in the Construction Schedule are dates critical to the Owner’s operations that establish when the Work or a part thereof is to commence and be complete. All milestone dates are of the essence.

(Paragraph deleted)

(Table deleted)

(Paragraphs deleted)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be one of the following:  
(Check the appropriate box.)

- [ X ] Stipulated Sum, in accordance with Section 4.2 below
- [ ] Cost of the Work plus the Contractor’s Fee, in accordance with Section 4.3 below
- [ ] Cost of the Work plus the Contractor’s Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

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

§ 4.2 Stipulated Sum

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

§ 4.2.1.1 The Stipulated Sum shall not be adjusted for increased labor or material costs, whether foreseen or unforeseen, which may occur between the date of this Agreement and the Commencement Date, or which may occur between the Commencement Date and the Substantial Completion Date or Dates set forth in this Agreement.

§ 4.2.2 Alternates

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

Item	Price
------	-------

§ 4.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

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

Item	Price
Contingency Allowance Contract BE-01	\$137,000
Contingency Allowance Contract GC-01	\$75,000
Contingency Allowance Contract EC-01	\$140,000
Contingency Allowance Contract MC-01	\$345,000
Contingency Allowance Contract PC-01	\$13,000

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

Item	Units and Limitations	Price per Unit (\$0.00)
As per Specification 01 22 00		

(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the 7th day of a month, absent any defaults of the Contractor under the Contract Documents, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor not later than the 7th day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, absent any defaults of the Contractor under the Contract Documents, payment shall be made by the Owner not later than thirty ( 30 ) days after issuance of a Certificate for Payment.

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

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

**§ 5.1.4.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. All progress payments made previous to the last and final payment shall be based on estimates and the right is hereby reserved by the Architect for the Owner to make all due and proper corrections in any payment for any previous error.

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

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

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

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

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

*(Paragraphs deleted)*

#### **§ 5.1.7 Retainage**

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

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

Five percent (5%)

**§ 5.1.7.1.1** The following items are not subject to retainage:

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

None.

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

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

No retainage reduction prior to Substantial Completion of the entire Work and all closeout paperwork received and approved.

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

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

Upon Substantial Completion of the Work, the payment shall be less two times the value of any remaining Work to be completed as the Construction Manager recommends and the Architect determines for incomplete Work and an amount necessary to satisfy any claims, liens or judgments against the Contractor that have not been suitably discharged.

## **§ 5.2 Final Payment**

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A232-2019, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to the Table of Contents CSI Format, Determination of the Cost of the Work when payment is on the basis of the Cost of the Work, with or without a Guaranteed Maximum payment; and
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:
- .4 all closeout paperwork per checklist

Refer to Specification Section 01 7701 – Checklist for Project Closeout and Processing of Final Payment.

*(Paragraphs deleted)*

**§ 5.2.2** In addition to other required items, including but not limited to those set forth in Section 5.2.1 above and those required under Section 9.10 of the General Conditions, the final Application for Payment must be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable law:

- .1 permanent certificate(s) of occupancy or use issued by the appropriate governmental authority;
- .2 all maintenance and operating manuals;
- .3 marked sets of field drawings and specifications reflecting "as-built" conditions;
- .4 reproducible Mylar drawings reflecting the location of any concealed utilities, mechanical and electrical systems, and their components;
- .5 assignments of all guarantees and warranties to the Contractor from Subcontractors, materialmen, vendors, or manufacturers, together with a list of their names, addresses, telephone numbers, and corresponding guarantees and warranties from each; and
- .6 all other information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner, Architect, or Construction Manager.

*(Paragraphs deleted)*

**§ 5.2.3** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment.

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due

*(Paragraphs deleted)*

in accordance with Section 106-b(1)(b) of the New York State General Municipal Law.

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232-2019,

*(Paragraphs deleted)*

as modified.

## **§ 6.2 Binding Dispute Resolution**

For any Claim, dispute or other matter in controversy arising out of or related to the Contract, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

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

☒ Litigation in a court of competent jurisdiction located in **Rockland** County.

☐ Other: *(Specify)*

*(Paragraphs deleted)*

## **ARTICLE 7 TERMINATION OR SUSPENSION**

### **§ 7.1 Where the Contract Sum is a Stipulated Sum**

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

*(Paragraphs deleted)*

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

*(Paragraphs deleted)*

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

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

**§ 8.2** The Owner's representative:

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

**Mario Spagnuolo, Attorney/ Assistant Superintendent for Business**

**Rudy Villanyi, Director of Facilities**

101 Church Street  
Nanuet, N.Y. 10954

**§ 8.3** The Contractor's representative:

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

TBD

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

### **§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Contractor shall purchase and maintain insurance as set forth in Article 11 of AIA Document A232–2009, as modified.

**§ 8.5.2** The Contractor shall provide bonds as set forth in Article 11 of AIA Document A232–2009, as modified.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, as modified, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:  
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they will endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 8.7 Intentionally omitted.

§ 8.8 Other provisions:

§ 8.8.1 The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- .1 that it and its Subcontractors are financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- .3 that it is authorized to do business in the State of New York and the United States and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- .4 that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- .5 that its duly authorized representative has visited the site of the Project, is familiar with the local and special conditions under which the Work is to be performed and has correlated on-site observations with the requirements of the Contract Documents; and
- .6 that it possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of the particular Project, and that it will perform the Work with the care, skill and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor's liability hereunder shall survive the Owner's final acceptance of and payment for the Work. All representations and warranties set forth in this Agreement, including without limitation, this Section 8.8.1, shall survive the final completion of the Work or the earlier termination of this Agreement. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition.

§ 9.1.2 The General Conditions are, AIA Document A232–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.4 The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Init.

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User Notes:

(1500150117)

Exhibit A – Specifications table of contents

Section	Title	Date	Pages
Refer to Specification Exhibit, Section 00 0110 for complete list of specifications	Table of Contents	February 6, 2023	

§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)  
Exhibit B – List of Drawings

Number	Title	Date
Refer to Drawing Exhibit Title Sheet (TS) Drawing List	Title Sheet	February 6, 2023

(Paragraphs deleted)  
§ 9.1.6 The Addenda, if any:

Number	Date	Pages
TBD		

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

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents are:  
(Paragraph deleted)

- .1 AIA Document A132™–2009, Exhibit A, Determination of the Cost of the Work, if applicable.

(Paragraph deleted)

- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

(Paragraph deleted)

- .3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

(Table deleted)

(Table deleted)

- .4 Other documents, if any, listed below:  
(List here any additional documents which are intended to form part of the Contract Documents. AIA Document A232–2019 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit B - Bidding Documents: Specification and Drawings

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

OWNER (Signature)

Christine Camillerri Board President  
(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)



# Additions and Deletions Report for AIA® Document A132® – 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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:08:07 ET on 02/07/2024.

## PAGE 1

**AGREEMENT** made as of the     day of     in the year 2025  
(In words, indicate day, ~~month~~, month and year.)

...

(Name, legal status, ~~address~~, address and other information)

Nanuet School District  
101 Church Street  
Nanuet, NY 10954  
T. 845.343.1481

...

(Name, legal status, ~~address~~, address and other information)

...

(Name, location and detailed description)

NANUET BOND PROJECTS PHASE 5  
HIGHVIEW ELEMENTARY SCHOOL: 50-01-08-03-0-002-020  
BARR MIDDLE SCHOOL: 50-01-08-03-0-004-022  
MILLER ELEMENTARY SCHOOL: 50-01-08-03-0-001-026  
MAINTENANCE BUILDING: 50-01-08-03-7-007-002  
OUTDOOR EDUCATION CENTER: 50-01-08-03-7-012-004

...

(Name, legal status, ~~address~~, address and other information)

Jacobs  
500 7<sup>th</sup> Ave. 17<sup>th</sup> Floor  
New York, NY 12601  
T. 646.908.6550

...

(Name, legal status, ~~address~~, address and other information)

KSQ Architects, PC (dba KSQ Design)  
215 West 40<sup>th</sup> Street, 15<sup>th</sup> Floor  
New York, NY 10018  
T. 914.628.3700

...



## 9 ENUMERATION OF CONTRACT DOCUMENTS

~~EXHIBIT A — INSURANCE AND BONDS~~~~EXHIBIT B — DETERMINATION OF THE COST OF THE WORK~~

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, the Bidding Documents, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9. The Contractor represents that it has fully reviewed the Contract Documents and agrees that the Contract Documents describe, to the best of the Contractor's knowledge, the Work necessary to furnish and provide (and that the Contractor shall furnish and provide) a fully functioning Project consistent with the Contract Documents.

...

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. It is the intent of the parties to include within the Work any and all labor, materials, equipment and services that, although not expressly indicated in the Contract Documents, are reasonably inferable therefrom to construct complete and workable systems for the satisfactory performance, execution, final completion and use of the Work and Project.

~~ARTICLE 3 — DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION~~~~ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION~~

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

~~(Check one of the following boxes.)~~

☐ — The date of this Agreement.

☐ — ~~A date set forth be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.~~

☐ — Established as follows:

~~(Insert a date or a means to determine the date of commencement of the Work.)~~ the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

~~If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.~~ If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanics' liens and other security interests, the Owner's time requirement shall be as follows:

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work. The provisions of this Contract relating to the time for performance and completion of the Work are of the essence of this Contract. Accordingly, time is of the essence respecting the Contract Documents and all obligations thereunder.

**§ 3.3** ~~Substantial Completion of the Project or Portions Thereof~~ The Contractor shall achieve Substantial Completion of the entire Work not later than ( ) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

As per Milestone Schedule Section 011100

**Portion of the Work**

**Substantial Completion Date**

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

A fine of \$1,000 per calendar day past the date of substantial completion if at no fault of the architect or owner

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

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

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

**Portion of Work**

**Substantial Completion Date**

§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete Time is of the essence in the performance of the Contract Documents, including, without limitation, the Substantial Completion dates established herein. The Contractor shall proceed expeditiously with adequate forces and shall use its best efforts to keep its Work and the Project on schedule, and the Contractor shall achieve the completion times established within the Contract Documents. Milestone dates set forth in the Construction Schedule are dates critical to the Owner's operations that establish when the Work or a part thereof is to commence and be complete. All milestone dates are of the essence.

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

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

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

[ ] — By the following date:

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

**Portion of Work**

**Date to be substantially complete**

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

PAGE 3

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

...

§ 4.2.1.1 The Stipulated Sum shall not be adjusted for increased labor or material costs, whether foreseen or unforeseen, which may occur between the date of this Agreement and the Commencement Date, or which may occur between the Commencement Date and the Substantial Completion Date or Dates set forth in this Agreement.

PAGE 4

Contingency Allowance Contract GC-01  
Contingency Allowance Contract EC-01  
Contingency Allowance Contract MC-01  
Contingency Allowance Contract PC-01

...

As per Specification 01 22 00

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

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

**~~§ 4.3.2~~** The Contractor's Fee:

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

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

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

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

**~~§ 4.3.6~~** Unit prices, if any:

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

Item

Units and Limitations

Price per Unit (\$0.00)

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

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

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

**~~§ 4.4.2~~** The Contractor's Fee:

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

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

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

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

**§ 4.4.6** Unit Prices, if any:

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

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

**§ 4.4.7 Guaranteed Maximum Price**

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

**§ 4.4.7.2 Alternates**

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

Item	Price
------	-------

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

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

Item	Price	Conditions for Acceptance
------	-------	---------------------------

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

*(Identify each allowance.)*

Item	Price
------	-------

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

*(Identify each assumption.)*

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

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

**§ 4.5** Liquidated damages, if any:

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

**§ 4.6** Other:

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

...

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

...

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the 7<sup>th</sup> day of a month, absent any defaults of the Contractor under the Contract Documents, the Owner shall make payment of the ~~amount certified~~ certified amount in the Application for Payment to the Contractor not later than the 7<sup>th</sup> day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, ~~payment of the amount certified~~ absent any defaults of the Contractor under the Contract Documents, payment shall be made by the Owner not later than (—) days after the Construction Manager receives the Application for Payment.  
(Federal, state or local laws may require payment within a certain period of time.) thirty ( 30 ) days after issuance of a Certificate for Payment.

#### PAGE 5

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

§ 5.1.4.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. All progress payments made previous to the last and final payment shall be based on estimates and the right is hereby reserved by the Architect for the Owner to make all due and proper corrections in any payment for any previous error.

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

...

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document ~~A232–2019; A232–2019, as modified;~~

...

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner, Construction Manager or Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document ~~A232–2019; A232–2019, as modified;~~ and

...

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

Five percent (5%)

...

None.

...

No retainage reduction prior to Substantial Completion of the entire Work and all closeout paperwork received and approved.

**PAGE 6**

Upon Substantial Completion of the Work, the payment shall be less two times the value of any remaining Work to be completed as the Construction Manager recommends and the Architect determines for incomplete Work and an amount necessary to satisfy any claims, liens or judgments against the Contractor that have not been suitably discharged.

...

**§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A232-2019, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to the Table of Contents CSI Format, Determination of the Cost of the Work when payment is on the basis of the Cost of the Work, with or without a Guaranteed Maximum payment; and
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:
- .4 all closeout paperwork per checklist

Refer to Specification Section 01 7701 – Checklist for Project Closeout and Processing of Final Payment.

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

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

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

**§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price** In addition to other required items, including but not limited to those set forth in Section 5.2.1 above and those required under Section 9.10 of the General Conditions, the final Application for Payment must be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable law:

- .1 permanent certificate(s) of occupancy or use issued by the appropriate governmental authority;
- .2 all maintenance and operating manuals;
- .3 marked sets of field drawings and specifications reflecting "as-built" conditions;
- .4 reproducible Mylar drawings reflecting the location of any concealed utilities, mechanical and electrical systems, and their components;
- .5 assignments of all guarantees and warranties to the Contractor from Subcontractors, materialmen, vendors, or manufacturers, together with a list of their names, addresses, telephone numbers, and corresponding guarantees and warranties from each; and
- .6 all other information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner, Architect, or Construction Manager.

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

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

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

**§ 5.2.3** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment.

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

~~—%~~ in accordance with Section 106-b(1)(b) of the New York State General Municipal Law.

...

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232–2019, ~~unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~  
*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

as modified.  
**PAGE 7**

For any ~~Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019,~~ Claim, dispute or other matter in controversy arising out of or related to the Contract, the method of binding dispute resolution shall be as follows:

...

[ ☒ ] Litigation in a court of competent jurisdiction ~~jurisdiction located in Rockland County.~~

[ ☐ ] Other: *(Specify)*

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

...

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

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

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

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

~~§ 7.2.1 Termination~~

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

~~§ 7.2.1.2 Termination by the Owner for Cause~~

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

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

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

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

~~§ 7.2.1.3 Termination by the Owner for Convenience~~

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

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

~~§ 7.3 Suspension~~

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

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

...

**Mario Spagnuolo, Attorney/ Assistant Superintendent for Business**

**Rudy Villanyi, Director of Facilities**

101 Church Street  
Nanuet, N.Y. 10954

...

TBD

...

**§ 8.5.1** ~~The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents. Article 11 of AIA Document A232-2009, as modified.~~

**§ 8.5.2** ~~The Contractor shall provide bonds as set forth in AIA Document A132™-2019, Exhibit A, and elsewhere in the Contract Documents. Article 11 of AIA Document A232-2009, as modified.~~

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

PAGE 8

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they will endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

**§ 8.7 Relationship of the Parties**

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

...

**§ 8.8.1** The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- .1 that it and its Subcontractors are financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- .3 that it is authorized to do business in the State of New York and the United States and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- .4 that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- .5 that its duly authorized representative has visited the site of the Project, is familiar with the local and special conditions under which the Work is to be performed and has correlated on-site observations with the requirements of the Contract Documents; and
- .6 that it possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of the particular Project, and that it will perform the Work with the care, skill and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor's liability

hereunder shall survive the Owner's final acceptance of and payment for the Work. All representations and warranties set forth in this Agreement, including without limitation, this Section 8.8.1, shall survive the final completion of the Work or the earlier termination of this Agreement. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

...

**§ 9.1** This Agreement is comprised of the following documents: The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

**§ 9.1.1** The Agreement is this executed AIA Document A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition.

**§ 9.1.2** The General Conditions are, AIA Document A232–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

**1** AIA Document A132™ 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition **§ 9.1.3** The Supplementary and other Conditions of the Contract:

**2** AIA Document A132™ 2019, Exhibit A, Insurance and Bonds Exhibit **3** AIA Document A232™ 2019, General Conditions of the Contract for Construction, Construction

<u>Document</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
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Manager as Adviser Edition

**4** AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: **§ 9.1.4** The Specifications:

*(Insert the date of the E203–2013 incorporated into this Agreement.) (Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Exhibit A – Specifications table of contents

<u>Section</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
Refer to Specification Exhibit, Section 00 0110 for complete list of specifications	Table of Contents	February 6, 2023	

**§ 9.1.5** The Drawings:

**5** Drawings *(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Exhibit B – List of Drawings

**PAGE 9**

Refer to Drawing Exhibit Title Sheet (TS) Drawing List	Title Sheet	February 6, 2023
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**6** Specifications

<u>Section</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
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**7** Addenda, if any: **§ 9.1.6** The Addenda, if any:

...

TBD

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

**8** Other Exhibits: **§ 9.1.7** Additional documents, if any, forming part of the Contract Documents are:

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User Notes:

(1500150117)

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

☐ AIA Document A132™ 2019, Exhibit B, 1 AIA Document A132™ 2009, Exhibit A, Determination of the Cost of the Work, if applicable.

☐ AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:

(Insert the date of the E235-2019 incorporated into this Agreement.) 2 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:

...

☐ The Sustainability Plan:

3 AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

Title	Date	Pages
-------	------	-------

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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9 4 Other documents, if any, listed below:

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

Exhibit B - Bidding Documents: Specification and Drawings

...

Christine Camilleri Board President



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

***AIA® Document D401™ – 2003***

I, David Short, 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 15:08:07 ET on 02/07/2024 under Order No. 2114442937 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



# 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)*

#### **NANUET BOND PROJECTS PHASE 5**

HIGHVIEW ELEMENTARY SCHOOL: 50-01-08-03-0-002-020

BARR MIDDLE SCHOOL: 50-01-08-03-0-004-022

MILLER ELEMENTARY SCHOOL: 50-01-08-03-0-001-026

MAINTENANCE BUILDING: 50-01-08-03-7-007-002

OUTDOOR EDUCATION CENTER: 50-01-08-03-7-012-004

### **THE CONSTRUCTION MANAGER:**

*(Name, legal status and address)*

Jacobs

500 7<sup>th</sup> Ave, 17<sup>th</sup> Floor

New York, NY 12601

T. 646.908.6550

### **THE OWNER:**

*(Name, legal status and address)*

Nanuet School District

101 Church Street

Nanuet, NY 10954

T. 845.343.1481

### **THE ARCHITECT:**

*(Name, legal status and address)*

KSQ Architects, PC (dba KSQ Design)

215 West 40<sup>th</sup> Street, 15<sup>th</sup> Floor

New York, NY 10018

T. 914.628.3700

### **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
16	SPECIAL CONDITIONS
17	NEW YORK STATE LABOR LAW REQUIREMENTS
18	GENERAL MUNICIPAL LAW REQUIREMENTS OF THE STATE OF NEW YORK
19	SPECIFIC CONFORMANCE TO THE LAWS OF THE STATE OF NEW YORK

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter, the "Agreement"), and consist of the Bidding Documents (including, but not limited to, Invitations to Bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of the addenda relating to bidding requirements), the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction (hereinafter, the "Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

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

**§ 1.1.2.2** The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable statutes, codes, laws, ordinances and regulations.

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

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by 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 and general requirements for the Project.

**§ 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 including those in electronic form.

**§ 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**

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

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

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

**§ 1.1.11.4** "Accepted," "directed," "permitted," "requested," "required," and "selected" are used herein as term connections and unless specifically noted otherwise are to mean "accepted by the Architect," "directed by the Architect," "permitted by the Architect," "requested by the Architect," "required by the Architect," and "selected by the Architect." However, no such implied meaning will be interpreted to extend the Architect's responsibility into the Contractor's areas of construction supervision.

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

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

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

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

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

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

**§ 1.1.11.11** The term "replace" or similar term shall mean "restore," "renew," "make good," "reconstruct," or "as applicable using new product."

**§ 1.1.11.12** 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 where in sight in crawl spaces or service tunnels.

**§1.1.11.13** 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.

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

**§ 1.1.11.15** "Wiring" shall be understood to mean wires or cables with conduit, fittings, boxes, etc., installed complete.

**§ 1.1.11.16** "Piping" shall be understood to mean all pipes, fittings, nipples, valves and all accessories connected thereto.

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

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

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

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

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract 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 shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.1.2** The Contractor and its Subcontractors shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation (1) location, layout, and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools, equipment, (5) Owner occupancy requirements and constraints, (6) site safety logistics plan and any phased construction plan and (7) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. No adjustments will be made in either the Contract Sum or Contract Time for any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 1.2.1.2.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications including, without limitation, items in connection with prefabricated or prefinished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified in the Contract Documents. If necessary, such work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

**§ 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 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 or (2) comply with the more stringent requirements; either or both in accordance with the Architect's interpretation. Where the Contractor perceives a conflict, it shall inform the Architect and Owner thereof and request a decision from the Architect, which shall be promptly communicated by the Architect to the Contractor so as not to cause any delay in the performance of the Work. Any Work performed after perceiving the conflict and prior to resolution by the Architect shall be at the Contractor's risk. The terms and provisions of this Section 1.2.4, however, shall not relieve the Contractor of any of the obligations set forth elsewhere herein.

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

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

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers do not own and cannot 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.

**§ 1.5.3** The Contractor may not reproduce the Contract Documents in whole or in part for use as shop drawing backgrounds without the prior written consent of the Architect. If consent is given, the Architect shall determine the extent that the Contract Documents may be used in the preparation of shop drawings, as well as the fee that the Architect will be paid, if any and in the Architect's sole discretion, by the Contractor for such use of copyrighted documents.

### **§ 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. 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.

**§ 2.1.3** The Owner, Architect or Construction Manager shall not supervise, direct or have control or authority over, nor be responsible for, the Contractor's 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 and regulations applicable to the furnishing or performance of the Work. The Owner, Architect and Construction Manager shall not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

### **§ 2.2 Evidence of the Owner's Financial Arrangements – Intentionally Omitted.**

*(Paragraphs deleted)*

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

**§ 2.3.1** All permits and fees, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities are the responsibility of the Contractor under the Contract Documents with the exception of the building permit, which the Owner will obtain from the State Education Department.

**§ 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 whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

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

foregoing, information furnished by the Owner in the form of surveys, subsurface investigation reports, soil borings, and other material of a similar nature, is for general information only and is not a guarantee of the completeness or accuracy of such information, unless specifically noted otherwise herein. The Contractor shall verify all existing grades, conditions, and dimensions of existing physical conditions and structures and shall report any inconsistencies in writing to the Architect. The Contractor shall establish all lines and levels required to execute the Work and shall bear all costs involved, and shall be responsible for their accuracy and maintenance.

**§ 2.3.6** Intentionally omitted.

**§ 2.3.7** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor five (5) sets of Contract Drawings and Project Manuals for use during construction for their own use and for purposes of making reproductions pursuant to Section 1.5.2. The 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. Subcontractors and other entities desiring copies of Drawings will be provided sets at the cost of printing, postage and handling.

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

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

If the Contractor (1) fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2, or (2) fails to carry out Work in accordance with the Contract Documents as determined by the Owner, Architect or Construction Manager, or (3) fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or (4) fails to remove and discharge (within seven (7) days) any lien filed upon Owner's property by anyone claiming by, through, or under the Contractor, or (5) fails to perform the Work in a safe manner and in compliance with all applicable health and safety requirements and the Contractor's site specific health and safety plan or (6) disregards the instructions of the Architect, Owner or Construction Manager, as determined by the Owner, Architect or Construction Manager, 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. Such order or stoppage by the Owner shall not constitute grounds for termination by the Contractor under Article 14 and shall not be a basis for an extension of the Contract Time under Section 8.3 or Article 15.

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents (including but not limited to all applicable health and safety requirements) and fails within a three (3) work day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such three (3) work day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and other expenses made necessary by such default, neglect or failure. Such Change Order or Construction Change Directive shall be deemed to have been executed by the Contractor, whether or not actually signed by the Contractor. Such action by the Owner and amounts charged to the Contractor shall be equally binding upon the Contractor's performance and payment bond surety. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**§ 2.6 Extent of Owner's Rights**

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

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

## ARTICLE 3 CONTRACTOR

### § 3.1 General

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

The term "Contractor" used herein shall include:

1. That Contractor normally responsible for that Work referenced.
2. "Prime Contractor" meaning either General Contractor, HVAC Contractor, Plumbing Contractor, Electrical Contractor, or any other Contractor whom the Owner has a direct contractual relationship for the referenced Work.
3. "Trade Contractor" meaning the Prime Contractor as above.

§ 3.1.2 The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

§ 3.1.4 The Contractor shall not be relieved of 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.

§ 3.2.1.1 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the Contract Documents relative to that portion of the Work, as well as with 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, shall observe any conditions at the site affecting it, and shall at once report in writing to the Construction Manager and the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner, the Construction Manager or the Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor knew or reasonably should have known of such error, inconsistency or omission and failed to report it as required by this section to the Construction Manager and the Architect. If the Contractor performs any construction activity knowing it involves, or reasonably should have known it involves, a recognized error, inconsistency or omission in the Contract Documents without such notice to the Construction Manager and the Architect, the Contractor shall assume full responsibility for such performance and shall bear sole responsibility for the costs for correction.

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

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

**§ 3.2.2** The Contractor shall be presumed to have examined the Project site(s) to consider fully all conditions that may have a bearing on the Work and to have accounted for these conditions its proposal. The Contractor is deemed to be a qualified expert in the systems and construction requirements of the Work of its Contract. The Contractor hereby specifically acknowledges and declares that the Contract Documents are full and complete, are sufficient to have enabled it to determine the cost of the Work, and that the Drawings, the Specifications, and all Addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, building codes, and regulations, and otherwise to fulfill all of its obligations under the Contract Documents. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Construction Manager and the Architect at once. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other Contractors, is not guaranteed by the Architect, Construction Manager or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner. Except as to any reported errors, inconsistencies or omissions, and except as to concealed or unknown conditions, by executing the Agreement, the Contractor represents to the Owner, Construction Manager, and the Architect that the Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedure and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to Work; (3) the requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work.

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

**§ 3.2.4** The Contractor may submit Requests for Information ("RFI") to the Architect to help facilitate the Contractor's performance of the Work. Prior to submitting each RFI, the Contractor shall first carefully study and compare the Contract Documents, field conditions, other Owner provided information, Contractor-prepared Coordination Drawings, and prior Project correspondence and documentation to determine that the information to be requested is not reasonably obtainable from such sources. The Contractor shall submit each RFI sufficiently in advance of the date by which such information is required in order to allow the Architect sufficient time to permit adequate review and response and to permit Contractor compliance with the latest construction schedule. The Contractor shall reimburse the Owner amounts charged by the Architect for RFI responses that in the opinion of the Architect were available from a careful review of the Contract Documents, field conditions, other Owner provided information, Contractor-prepared Coordination Drawings, and prior Project correspondence and documentation.

**§ 3.2.5** If the Contractor, during the progress of the Work, discovers any discrepancies between the Drawings and the Specifications, errors and/or omissions on the Drawings, or any discrepancies between physical conditions of the Work and the Drawings, and has notified the Architect and Construction Manager in writing under Section 3.2.1, no deviations from the Contract Documents shall be performed by the Contractor until it receives approval in writing from the Architect through the Construction Manager. Any Work performed after such discovery without the approval of the Architect shall be at the Contractor's sole risk and expense.

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

**§ 3.2.7** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or RFIs pursuant to Sections 3.2.1, 3.2.2, 3.2.4, 3.2.5 or 3.2.6, the Contractor shall make a Claim as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.1, 3.2.2, 3.2.4, 3.2.5 or 3.2.6, the Contractor shall pay such costs and damages to the Owner 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 the Architect for damages resulting from errors, inconsistencies or

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

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

**§ 3.2.8.1** The Contractor shall be required to establish centerlines, elevations and location of his work when it is required for the benefit of other Contractors needing the information to coordinate location of their work.

**§ 3.2.9** Whenever the Drawings show existing or other construction not required as part of the Contract Work, it is understood that it is so shown as a matter of information and that the Owner, while believing such information to be substantially correct, assumes no responsibility thereof. The Contractor shall make itself familiar with all conditions affecting the nature and manner of conducting the Work.

**§ 3.2.10** Claims for additional compensation or extension of time due to the Contractor's failure to familiarize itself with the conditions at the site will not be allowed.

### **§ 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, and shall complete the Work in a good and workmanlike manner in accordance with the Contract Documents. 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 subject to the coordination of the Construction Manager. Where the Drawings or Project Manual make reference to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in connection with the Contractor's Work, such reference is intended only to indicate that the Contractor's Work is to produce at least the quality of the work implied by the operations described, but the actual determination as to whether or not the described operations may be safely or suitably employed in the performance of the Contractor's Work shall be the sole responsibility of the Contractor. All loss, damage, liability, or cost of correcting defective Work arising from the employment of a specific construction means, method, technique, sequence, or procedure shall be borne solely by the Contractor.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, Suppliers, 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, Suppliers or Sub-subcontractors, and for any damages, losses, costs and expenses resulting from such acts or omissions, including but not limited to reasonable attorneys' fees.

**§ 3.3.3** The Contractor shall be responsible for coordinating the work of its own forces and the work of Subcontractors engaged by it to perform the Work of the Project on its behalf. The Contractor shall supply to its own work forces, and Subcontractors engaged by it to perform portions of its Work, copies of the Drawings and Project Manuals for the work to be performed by such individuals/entities on its behalf.

**§ 3.3.3.1** The Contractor shall coordinate its operations and cooperate with those of other Contractors performing work on the Project or site thereof to ensure efficient and orderly installation of each part of the Work. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the Work. The Contractor shall remain informed of the progress and the detail work of other Contractors and shall notify the Construction Manager immediately of lack of progress or defective workmanship on the part of other Contractors, where such delay or such defective workmanship will interfere with Contractor's own operations. Failure of the Contractor to keep informed of the work progressing on the site or to give notice of lack of progress or defective workmanship by others shall be construed as acceptance of the progress of work and coordination with Contractor's own Work.

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

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

§ 3.3.3.3 The Contractor and its Subcontractors working on the Project shall attend a preconstruction conference(s) or meeting(s) as deemed necessary by the Construction Manager to coordinate all Work (e.g., demolition, installation, etc.), and as required by the Project Manual.

§ 3.3.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or the Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor. The Contractor shall maintain complete inspection records and test date to ensure the quality of the Work is in strict compliance with the requirements of the Contract Documents.

§ 3.3.5 Where equipment lines, piping, ductwork, 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. The Contractor shall coordinate the work of its Subcontractors and prevent all interferences between or among equipment, lines of piping, and architectural features, and avoid any unsightly arrangements in exposed areas. This Section shall not be construed as limiting any obligation of the Contractor under any other provision of the Contract Documents.

§ 3.3.6 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.

§ 3.3.7 The Contractor, its employees and Subcontractors, shall be subject to such rules and regulations for the conduct of Work as the Owner may establish, including but not limited to, the Construction Rules and Regulations set forth in Section 3.13.4. The Contractor shall be responsible for the enforcement among its employees of the Owner's instructions.

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

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

§ 3.3.10 **Shutdowns:** Such work as connections to existing sewers, plumbing, heating, and electrical systems shall be coordinated at a time agreeable to the Owner, the Architect, and the Construction Manager, and shall be determined and agreed to well in advance of the actual performance of such work so as to interfere as little as possible with the operation and use of the Owner's existing facilities. Shutdowns must be coordinated through the Construction Manager. The continued uninterrupted operation of all facilities of the Owner's buildings is essential. If any existing facilities must be interrupted, the Contractor for the Work shall provide all necessary temporary facilities and connections necessary for maintaining these existing facilities at no increase in the Contract Sum except as otherwise specified. No mechanical, heating, plumbing, sprinkler, or electric service shall be interrupted at any time except as approved in advance by the Owner or when the buildings are not occupied and shall be coordinated with the Owner, as

well as the Construction Manager. All communication systems must be maintained without interruption. As much related work as possible shall be performed prior to shutdowns, so as to minimize the period of shut down. All material, equipment, and manpower necessary in the performance of a shutdown shall be on site prior to interruption of service.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor (at applicable prevailing wage rates), 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. All materials provided by Contractor shall be new. The Contractor shall work continuously and expeditiously through completion of the Work. Time is of the essence.

**§ 3.4.1.1** Notwithstanding any other provision of the Contract Documents, Contractor shall perform at least twenty five (25%) percent of the field work with its own full-time employees. For the purpose of the preceding sentence any part of the work performed by supervisory personnel (persons above level of foreman) or by office personnel shall not be considered part of the Work performed by Contractor's employees. Such items as bonds, certificates, shop drawings and similar items are not to be counted as satisfying the twenty five (25%) percent requirement.

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

**§ 3.4.1.2** The Contractor shall be responsible for the care and protection of all equipment and materials for its Work on the Project, including equipment and material furnished by the Owner.

**§ 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 resulting 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, or persons who within the last five (5) days (a) having been exposed to someone having been diagnosed with a COVID-19 infection; or (b) having had a persistent cough, shortness of breath, or a fever of 100.4 or higher. The Owner reserves the right to have any persons removed from the Project upon reasonable objection.

**§ 3.4.3.1** In addition to all other safety requirements, the Contractor shall provide suitable and a sufficient number of safety related facilities and personal protective equipment (PPE) at the site related to protection against the spread of COVID-19, including but not limited to handwashing stations, hand sanitizer, gloves, masks, face shields, and other equipment as the Owner may reasonably request. Notwithstanding the foregoing, nothing herein shall be construed to delegate or relieve Contractor from having sole and exclusive responsibility for all worksite safety.

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

**§ 3.4.5** Employees of the Contractor or its Subcontractors whose work is unsatisfactory to the Owner, Construction Manager or Architect, or considered by them to be unskilled or otherwise objectionable, will be immediately dismissed from the Project upon notice from the Construction Manager. Those dismissed employees shall be immediately replaced by the Contractor so as not to delay progress of the Work and at no additional cost to the Owner. **All employees of the Contractor or Subcontractor shall be processed through the Owner's database which excludes sex offenders and other people not deemed safe for presence on a school site. Any person who is flagged by that system shall not be employed on site. Further, the Contractor or its Subcontractor shall not employ any person onsite who is known to them to be a sex offender as defined by New York State.**

**§ 3.4.6** On receipt of the signed Contract, the Contractor will be expected to place firm orders with vendors for needed materials, including Subcontractors and major material suppliers. If deemed necessary to assure delivery of materials at times needed, the Contractor may accept delivery of such materials at any time, and may include the cost of such materials in its next monthly Application for Payment, provided such materials have actually been delivered to Contractor and properly stored by it with approval or under direction of the Architect and the Construction Manager either at the Project site or in an approved storage shed or warehouse, as provided elsewhere in these General Conditions.

**§ 3.4.6.1** To the fullest extent possible, the Contractor shall provide products of the same kind, from a single source. When two or more items of same material or equipment are required (pumps, valves, air conditioning units, etc.) they shall be of the same manufacturer. Product manufacturer uniformity does not apply to raw materials, bulk materials, pipe, tube, fittings (except flanged and grooved types), sheet metal, wire, steel bar stock, welding rods, solder, fasteners, motors for dissimilar equipment units, and similar items used in the work, except as otherwise indicated. The Contractor shall provide products which are compatible within systems and other connected items. If Contractor is given option of selecting between two or more products for use on the Project, product selected shall be compatible with products previously selected, even if previously selected products were also options.

**§ 3.4.6.2** The Contractor is responsible for providing products and construction methods compatible with products and construction methods of other contractors. If a dispute arises between the Contractor and other contractors over concurrently selectable but incompatible products, the Architect will determine which products shall be used.

**§ 3.4.6.3** With respect to sitework materials, all products submitted for use and incorporated into the Project shall be on the Approved List of Materials and Equipment published by the NYSDOT Materials Bureau, most recent edition.

**§ 3.4.6.4** When required, off-site storage shall be the responsibility of the Contractor. If materials are stored off site, the Contractor shall furnish proof of title by Owner and provide a certificate of insurance demonstrating adequate insurance coverage.

**§ 3.4.6.5** The Contractor shall deliver all materials at such times as will ensure speedy and uninterrupted progress of the Work.

**§ 3.4.6.6** 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. The Owner reserves the right to object to Contractor's use of persons who appear unfit or not skilled in the tasks assigned to them. Should any disorderly, incompetent, unfit, unskilled or objectionable person be hired or employed by the Contractor, upon or about the Premises of the Owner, for any purpose or in any capacity, they shall, upon request of the Owner, be removed from the Project and not again be assigned thereon without the written permission of the Owner.

**§ 3.4.6.7** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, within 10 days of receipt of the signed Contract, shall furnish in writing the Owner through the Construction Manager and Architect a list showing the name of the manufacturer proposed to be used for each of the products identified in the Specifications, and where applicable, the name of the installing Subcontractor. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or Architect, after due investigation, has reasonable objection to any such proposed manufacturer or installer. If adequate data on a proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides additional data. Failure of the Owner or Architect to promptly reply shall constitute notice of no reasonable objection. Failure to object to a manufacturer or installer shall not constitute a waiver of the requirements of the Contract Documents, and products furnished by the listed manufacturer shall conform to such requirements.

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



**§ 3.4.8** The Contractor shall make every reasonable effort to avoid labor disputes and to insulate the Owner, Architect and Construction Manager from the effects of labor disputes should any arise. There shall be no strikes, picketing, work stoppages, slowdowns, or other disruptive activity at the Project for any reason by anyone employed or engaged by the Contractor to perform its portion of the Work. There shall be no lockout at the Project by the Contractor. The Contractor shall be responsible for providing the manpower required to proceed with the Work under any circumstance. For the purposes of this Section, every reasonable effort shall include, but not necessarily be limited to:

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

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

**§ 3.4.8.5.1** No extension of time shall be granted for delays caused by labor or material disputes.

**§ 3.4.8.5.2** Should it become necessary to create a separate entrance for a Contractor involved in a dispute, all costs associated with creating that entrance shall be borne by the Contractor involved in the dispute. Such costs shall include, but not limited to signage, fencing, temporary roads and security personnel as deemed necessary by the Owner for the safety of the occupants of the site.

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

**§ 3.4.8.7** The Contractor shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes or strikes arising from the labor practices of the Contractor or its Subcontractors, Suppliers or Sub-subcontractors.

**§ 3.4.9** The Contractor and its Subcontractors employed upon the Work shall abide by and conform with all labor laws and to all other laws, ordinances, and legal requirements now or hereafter applicable to the Work and the construction area.

**§ 3.4.10** The Contractor and its Subcontractors shall be responsible for protection of the Work, the work of Separate or other Contractors, and existing construction, both on and off the site, and in the event of damage, shall restore the same to the original condition at no additional cost to the Owner.

**§ 3.4.11** If the Work is to be performed by trade unions, the Contractor shall, with the consent of the Owner and the Architect, which shall not be unreasonably withheld, make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind, at any time in force among members or councils that regulate or distinguish what activities are included in the work of any particular trade.

**§ 3.4.12** No new asbestos containing building materials shall be used in construction. No materials containing asbestos in any form shall be used in, on, or around the Owner's buildings.

### **§ 3.4.13** **Equivalents and Substitutions**

**§ 3.4.13.1 Equivalents.** In the Specifications, one or more kinds, types, brands, or manufacturers or materials are regarded as the required standard of quality and are presumed to be equal. The Contractor may select one of these items or, if the Contractor desires to use any kind type, brand, or manufacturer or material other than those named in the Specifications, it shall indicate in writing, and prior to award of the Contract, what kind, type, brand or manufacturer is included in the base bid for the specified item. The Contractor shall follow the submission requirements for equivalents as provided in the Project Manual. Any proposed equivalent shall not be purchased or installed by the Contractor without the Architect's review process having been completed and the product accepted by written notification.

**§ 3.4.13.2 Substitutions.** After the Contract has been executed, the Owner, Construction Manager and Architect will consider a formal request for the substitution of products in place of those specified only under conditions set forth in the Specifications.

**§ 3.4.13.3** By making said requests in conformance with procedures established herein and elsewhere in the Project Manual, the Contractor: (1) represents that it has personally investigated the proposed substitute product and has determined that it is equal to or superior in all respects to that specified; (2) represents that the warranty for the substitution will be the same, or greater than, that applicable to the specified product; (3) certifies that the cost data is complete and includes all related costs under the Contract, including professional services necessary and/or required for the Architect or its consultants to implement said substitution and waives any and all claims for additional costs related to the substitution which subsequently become apparent; (4) represents that it will coordinate the installation of the accepted substitute, making all such changes to the Drawings effected by the change, including but not limited to the electrical, plumbing, site work and heating and ventilating Specifications as may be required for the Work to be complete in all respects; and (5) represents that it will reimburse the Owner for all additional costs billed by the Architect or its consultants for the review of the substitution request(s), any redesign of the Work of this Contractor or associated contractors, additional site visits related to the substitution request and for the work to prepare Change Orders or Construction Change Directives.

**§ 3.4.13.4** Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions:

1. required for compliance with interpretation of code requirements or insurance regulations then existing;
2. unavailability of specified products, through no fault of the Contractor;
3. subsequent information discloses inability of specified products to perform properly or to fit in designated space;
4. manufacturer/fabricator refuses to certify or guarantee performance of specified products as required;
5. when in the judgment of the Owner, a substitution would be substantially in the Owner's best interests, in terms of costs, time or other considerations; and
6. where the Contractor establishes that the substituted product is equal or better than the specified product in all respects.

## **§ 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 good title to all materials, supplies, and equipment installed or incorporated in the Work. 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. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of the Owner. If required by the Architect, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract Documents. The Contractor shall perform the Work in strict accordance with the Contract Documents and best industry practices. The Contractor, at its expense, shall upon demand by the Owner, Construction Manager or Architect remove and replace materials not meeting specifications or materials failing to perform as represented or warranted by the manufacturer, regardless of whether incorporated into the Work. The Contractor shall promptly replace or correct any Work or materials that the Owner, Construction

Manager or Architect rejects as failing to conform to the requirements of the Contract Documents. The foregoing warranty obligations shall survive completion or termination of the Contract, are not limited by the provisions of Article 12, and are in addition to and not in limitation of any other warranty, right or remedy set forth in the Contract Documents or otherwise prescribed by law.

**§ 3.5.2** The Contractor warrants the Work and its performance to the Owner unconditionally. The Contractor shall perform all warranty obligations and responsibilities for the Work under the Contract Documents. The Contractor, at its own expense, shall remedy defects due to improper and/or defective workmanship or materials appearing within **two (2) years** of the Contractor completing the Work or such longer period as may be set forth in the Contract Documents ("Correction Period"), as further described in Article 12 of this Agreement. Upon completion of the Work, the Contractor shall assign and provide to the Owner all written warranties and guarantees from Subcontractors, suppliers, and material or equipment manufacturers. The Contractor shall fully cooperate with the Owner in the event the Owner pursues remedies under any warranties or guarantees assigned to the Owner. The Contractor acknowledges that its obligations to the Owner under this Section 3.5.2 and under Section 12.2 are joint and several with its Subcontractors, suppliers, vendors and manufacturers of all materials and equipment supplied on account of the Work. The Contractor is responsible for all harm caused by its failure to maintain equipment and materials installed through the Contractor's completion of its Work. The requirements of this Section 3.5 will continue notwithstanding termination of the Contractor for any reason. The foregoing warranty obligations are not limited by the provisions of Article 12, do not limit the Owner's assertion of a breach of warranty obligations following the three-year Correction Period, and are in addition to and not in limitation of any other warranty set forth in the Contract Documents or required by law.

**§ 3.5.3** No warranties or guarantees by the Contractor will deprive the Owner of any cause of action, right, or remedy otherwise available for breach of any of the provisions of the Contract Documents. The Correction Period does not limit the time in which the Owner may pursue any such action, right, or remedy.

**§ 3.5.3.1** The Contractor shall deliver to the Owner upon completion of all work under its Contract, its written guarantee made out to the Owner in a form acceptable to the Owner, guaranteeing (and he does so guarantee) all of the Work under the Contract to be free from faulty materials, and free from improper workmanship, and guarantees against injury from proper and usual wear and aging. This guarantee shall be made to cover (and does cover) a period of two (2) years from the date of Substantial Completion all work under the Contract, or for a longer period where so stipulated in the Contract Documents.

**§ 3.5.4** All required maintenance shall be the Contractor's responsibility until the Owner has accepted the Project as complete, all required maintenance and user's manuals have been turned over to the Owner, and the Owner's designated personnel have been instructed in the maintenance and operation of all applicable materials. This maintenance shall include a complete turnover procedure at the time of completion, including complete cleaning, testing and adjustment. The Contractor shall keep records of all such maintenance performed as required by this Section, including work performed and times and dates on which it was performed. These records shall be turned over to the Owner at closeout.

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

### **§ 3.6 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 payment of federal, state, and local sales and compensation use taxes on all supplies and materials incorporated into and becoming an integral component part of the structures, buildings, or real property pursuant to this Contract. Such taxes are therefore not to be included in the Contractor's bid or the Contract Sum. The Owner shall deliver to the Contractor the appropriate exemption certificate required to be supplied by the Owner, and the Contractor and its Subcontractors and materialmen shall be solely responsible for obtaining and delivering any and all exemption or other certificates and for furnishing a Contractor Exempt Purchase Certificate or other appropriate certificates to all persons, firms, or corporations from whom they purchase supplies, materials, and equipment for the performance of the Work.

§ 3.6.1.1 The Contractor's attention is called to fact that materials not actually incorporated into Work will not be exempt from payment of sales or compensating use taxes, and the Contractor and its Subcontractor shall be responsible for and shall pay any and all applicable taxes. This will apply to such things as:

- .1 construction machinery and equipment including rentals or repair parts;
- .2 The Contractor's office supplies;
- .3 The Contractor's supplies, tools and miscellaneous equipment including forms, materials, and scaffolding (whether purchased or rented);
- .4 temporary heat;
- .5 telephone or electric services; and
- .6 any other items purchased or rented by the Contractor for the Contractor's use in performing its Work and not incorporated into realty.

§ 3.6.2 The Contractor accepts full and exclusive liability for payment of any and all contributions, assessments or taxes for unemployment insurance or old age insurance, or annuities now or hereafter imposed by the government of the United States, or by the government of any city, county or state of United States, which are measured by salaries or other remuneration paid to persons employed by the Contractor or any Subcontractor for Work performed under this Contract.

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

§ 3.7.1 The Contractor shall, as soon as practicable, furnish the Owner, Architect, and Construction Manager with copies or certificates of all permits, fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all applicable building permits other than those required of the Owner under Sections 2.3.1. All inspection fees and other costs of such permits and licenses required to be obtained by the Contractor as may be imposed by any municipal or other entity shall be paid by the Contractor and shall not serve as the basis for any increase in the Contract Sum.

§ 3.7.2 The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor fails to give such notices, it shall be liable for and shall indemnify and hold harmless (a) the Owner, its consultants, employees, officers and agents and (b) the Architect, Construction Manager and their consultants, employees, officers and agents against any resulting fines, penalties, judgments, or damages, including reasonable attorney's fees, imposed on or incurred by the parties indemnified hereunder.

§ 3.7.2.1 In accordance with New York State Labor Law Article 8, Section 220, subd. 3-a(a), the Contractor shall submit to the Owner within 30 days after issuance of Contractor's first payroll, and every 30 days thereafter, a transcript of the original payroll record, subscribed and affirmed as true under the penalties of perjury.

§ 3.7.2.2 The Contractor shall comply with all applicable New York State Department of Labor requirements, including the provision that every worker employed in performance of a public work contract shall be certified as having completed an OSHA 10-hour safety training course. The Contractor and its Subcontractors shall be solely responsible for compliance with this requirement with respect to their employees. The Contractor's or Subcontractor's failure to comply with this requirement shall not transfer or in any way impose the responsibility for worker safety upon the Owner or the Architect.

§ 3.7.3 If the Contractor performs Work 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 all costs attributable to the correction thereof or related thereto, including reimbursement to the Owner for any additional services required of the Construction Manager or Architect, or both, as well as all fines and penalties, if any.

§ 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 give prompt written notice to the Owner, Construction Manager, and the Architect of such conditions before they are disturbed or affected work is performed and in no event later than three (3) business days after first observance of the conditions. The Architect or 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 an equitable adjustment 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 in writing, stating the reasons. If the Contractor disputes the Architect's determination or recommendation, it may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum will be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, and reviews, or (2) inspections, tests, and reviews the Contractor had the opportunity to make or should have performed in connection with the Project.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, including the costs for bonds 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. The Contractor is not entitled to overhead and profit on unexpended allowance amounts or any portions thereof.

**§ 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 designations shall be in writing and provided to the Construction Manager, Architect and Owner and shall include the qualifications of such individuals. The Superintendent shall be in attendance at the Project site throughout 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, work is stopped by the Owner, or no work is scheduled. The Superintendent shall be approved by the Owner in its sole discretion. Said representatives 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 a representative leave the Contractor's employ, the Contractor shall promptly designate a new representative. The Owner shall have the right, at any time and in its sole discretion, to direct a change in the Contractor's representatives if their performance is unsatisfactory. In the event of such a demand, the Contractor shall within seven (7) days after notification thereof, replace said individual(s) with an individual(s) satisfactory to the Owner, in the Owner's sole discretion. If said replacement is disapproved, the Contractor may, at the 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. 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. Each Subcontractor shall designate

the Project Manager, Superintendent and other key individuals who shall be assigned to the Project. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Contractor's Superintendent shall attend all Project meetings, regardless of whether held prior to or following Substantial Completion of the Work.

**§ 3.9.2** The Contractor shall provide, or otherwise see that, the Project Manager, or Superintendents or responsible workers of the Contractor and its major Subcontractors are equipped with cellular phones and radios. The Contractor shall provide the Owner, the Construction Manager, and the Architect with the number for each phone and worker.

**§ 3.9.3** The Contractor's supervisory personnel, including Superintendents and their assistants, shall be versed in the English language. In the event the Contractor's supervisory personnel, Superintendents and their assistants are not versed in the English language, the Contractor shall employ the services of a full-time on-site interpreter to facilitate communications with such supervisory personnel.

**§3.9.4** The Contractor shall not reduce or terminate supervision of the Work, nor change the superintendent without the prior written approval of the Owner.

**§3.9.5** If, for any reason, the Contractor takes an action resulting in any of the changes noted in Subsection 3.9.4, the Owner may take remedial action to **ensure** continued progress of the Work, including the hiring of suitable supervisory personnel, and charge the Contractor all costs associated with these remedial actions including the costs of legal and additional construction management and architectural services.

**§3.9.6** The Contractor shall furnish the Construction Manager, in writing the names, addresses and telephone number of the members of his organization who can be contacted in the event of an off-hours emergency at the building.

**§3.9.6** The Contractor shall attend progress meetings with the Construction Manager and such other persons the owner may require. The progress meetings shall include all key personnel on the job, including the contractor and subcontractors, or other persons in charge of various phases of the work.

**§3.9.7** Prior to the commencement of Work, the Contractor shall provide the Construction Manager and the Architect with:

- .1 A written list of subcontractors, sub-subcontractors, suppliers and vendors with names, addresses, telephone numbers, and descriptions of the work they shall perform or furnish;
- .2 The name, address and telephone number of the bonding company, banking and insurance company for the Contractor including the name, address and telephone number of each bonding company's primary contact representative for the Project;
- .3 Detailed Subcontractor schedules indicating the approximate quantity of shop drawings, sequence, timing and man loading; and
- .4 A cash flow projection for the life of the Project, including a schedule and graph showing the amount of Work projected to be completed each month or billing period and a dollar value for the anticipated billings each month or billing period. This shall be completed after an agreed upon schedule of values has been approved by the Construction Manage

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly, but in no event later than 14 days, after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's construction schedule for the Work in electronic format with predecessor logic. The construction 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 Contractor's construction schedule shall provide for the orderly progression of the Work to completion, and shall not exceed time limits current under the Contract Documents. The Contractor's construction schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

*(Paragraph deleted)*

**§ 3.10.1.1** Time is of the essence for this Project. The Work shall be performed continuously and without interruption, so that all Work can be completed in the time set forth in the Contract Documents.

§ 3.10.1.2 The sequence of the Work shall be scheduled with the Owner so as to minimize interference with the Owner's use of existing structures, and the Owner's approval shall be obtained prior to starting of the Work.

§ 3.10.1.3 The Contractor shall conform to the most recent Project Schedule, and all Work shall be completed on or before the dates established in the Contract Documents. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Project Schedule and shall promptly advise the Owner and Construction Manager of any delays or potential delays.

§ 3.10.2.1 The Construction Manager shall prepare, publish, and, from time-to-time, revise a master integrated Project Schedule based upon the construction schedules submitted by the various Prime Contractors. Failure by the Contractor to furnish any required schedule or schedule revision in a timely manner shall entitle the Construction Manager to prepare a schedule for the Contractor's Work, to which the Contractor shall be bound.

§ 3.10.2.2 The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the construction or operations of the Owner's own forces. The Owner shall have the right, without penalty, to direct the Contractor to delay, postpone or reschedule any portion of the Work that may interfere with or disrupt the operations of the Owner.

§ 3.10.3 The Contractor shall conform to the most recent Project Schedule.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed to the level of completion required of the Contract Documents or that the Contractor has failed to maintain its construction schedule or the Project Schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction including without limitations, additional shifts, overtime, additional manpower or equipment as well as other similar measures (hereinafter referred to collectively as "extraordinary measures"). Such extraordinary measures shall continue until the progress of Work complies with milestone and critical path dates set forth in the Contract Documents and the Project Schedule. The Contractor shall not be entitled to an adjustment in Contract Sum or Contract Time in connection with extraordinary measures required by the Owner.

§ 3.10.5 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not unreasonably be 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, 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.

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

§ 3.10.7 The Contractor shall perform the Work in general accordance with the most recent construction schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project Schedule. The Contractor shall monitor the progress of the Work for conformance with the requirements of its construction schedule and Project Schedule and shall promptly advise the Owner of any delays or potential delays affecting the critical path.

§ 3.10.8 If the Contractor fails to maintain the approved construction schedule or Project Schedule and meet all critical path dates for the Work, the Owner may request a recovery plan from the Contractor and reserves the right to withhold payment until such time as the Contractor submits a recovery plan. The recovery plan must show how the Work may plausibly be brought on schedule, including, as necessary, acceleration of the Work by means of overtime, additional crews, additional shifts, additional equipment or re-sequencing of the Work to achieve completion of the remaining critical path dates in the construction schedule or Project Schedule. The Contractor shall submit as part of its recovery plan: (i) a "resource loaded" schedule showing the Contractor's plan to deploy manpower per trade, per work area, per day, together with essential materials and equipment, and other resources necessary to timely accomplish the Work;



and (ii) a two-week "look ahead" schedule identifying tasks to be accomplished within the coming two week period, the work areas and categories of work, and necessary manpower resources, together with other data necessary to demonstrate to the Owner the viability of the Contractor's recovery plan ("2 Week Plans"). The Contractor shall continue to submit 2 Week Plans until either the Contractor demonstrates that the Project Schedule has recovered from the unexcused delay, or the Owner notifies the Contractor in writing that further 2 Week Plans are no longer required. The cost of preparing and performing the recovery plan shall be borne solely by the Contractor. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which the Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the final completion date.

**§ 3.10.9** The Contractor specifically represents and warrants to the Owner that that the Contract Sum and the Contract Time contemplate compliance with all current, and reasonable foreseeable future, federal, state and local "Stay at Home," "Social Distancing" and related orders, regulations and guidance related to limiting the spread of COVID-19 disease (the "COVID Requirements"). Accordingly, the Contractor hereby waives any claim for an increase in the Contract Sum or an extension of the Contract Time on account of the COVID Requirements. The Contractor shall promptly notify the Owner of any COVID Requirements that would impact the Project.

**§ 3.10.10** Due to the ongoing COVID-19 pandemic and the resulting uncertainty with regard to, among other things, (a) what restrictions, if any, will be applicable to construction activities due to federal, state or local orders, laws, regulations or rules related to the COVID-19 pandemic (including, without limitation, social distancing, PPE, cleaning and disinfection requirements) and (b) the duration of any restrictions imposed on construction activities, the Owner may modify the schedule set forth in the Contract Documents and the Project Schedule. Similarly, restrictions, if any, that will be or are applicable to construction activities due to federal, state or local orders, laws, regulations or rules related to the COVID-19 pandemic (including, without limitation, social distancing, PPE, cleaning and disinfection requirements) may cause the Owner to have the Work or the Project commence later than the date specified in the Contract Documents. The Contractor acknowledges and agrees that there should be no additional compensation paid for schedule modifications caused directly or indirectly by the COVID-19 pandemic. The Contractor further acknowledges and agrees that its sole remedy for any schedule modifications or delays caused directly or indirectly by the COVID-19 pandemic shall be an extension of the Contract Time, if warranted. The Contractor further acknowledges and agrees that it shall have on file and provide a copy to the Owner of its written COVID-19 business reopening plan, and it shall comply in all respects with such plan for the duration of the Project. The Contractor, not the Owner, shall be responsible for compliance with its COVID-19 business reopening plan and all safety requirements associated with COVID-19 protections for workers and the general public.

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

**§ 3.11.1** The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.11.2** The Contractor shall maintain at the site, and shall make available to the Owner, Construction Manager and Architect, one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the prosecution of the Contractor's Work. The prints for Record Drawing use will be a set of black line prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs, etc.; (v) architectural and structural changes in the design; and (vi) such other information as either the Owner or Architect may reasonably request. At the completion of the work, the Contractor shall transfer all information on record drawings to reproducible drawings with new information clouded and noted. Such drawings shall be stamped with the Contractor's name and "AS-BUILT" in the lower righthand corner. The colored record drawing and the as-built reproducible drawing shall be forwarded to the Construction Manager for delivery to the Owner. Final payment and any retainage shall not be due and owing to Contractor until the Record and As-Built drawings receive the approval from the Architect and the Owner (and all other closeout requirements are met).



**§ 3.11.3** The Contractor shall maintain all approved permit drawings in a manner so as to make them accessible to government inspectors and other authorized agencies having jurisdiction over the Project. All approved drawings shall be wrapped, marked and delivered to the Owner within 60 days of final completion of the Contractor's Work.

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

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. Each submittal shall bear written confirmation that the Contractor has satisfied its obligations under the Contract Documents with respect to the Contractor's review and approval of the submittal. The Contractor shall comply with the provisions and procedures for Shop Drawings, Product Data, and Samples set forth in Specifications Section 01 33 00, "Submittal Procedures."

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

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

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to (1) demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents, and (2) show a system or product's ability to meet applicable criteria 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.

**§ 3.12.4.1** Shop drawings and product submittals for all site improvement, architectural, structural, mechanical, electrical and signal work shall be submitted to the Architect for its review. Refer to Contract (General, Supplementary and other conditions) Section on "SUBMITTALS" for more complete information.

**§ 3.12.4.2** The Contractor represents and warrants that all shop drawings shall be prepared by a person or entity possessing expertise and experience in the trade for which the shop drawing has been prepared and, if required by the Contract Documents or law, by a licensed professional engineer.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, with copies 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 Architect or its 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. Resubmission of rejected documents shall be performed within 10 calendar days, or sooner if required by the progress of construction. No claim for delay or cost shall be accepted as a result of rejected submittal documents. If the Architect is required to review the Contractor's submittal more than twice, the Contractor shall bear the cost and expense associated with such additional review as set forth in the Project Manual.

**§ 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in writing 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 written notice, the Architect's approval of a resubmission shall not apply to such revisions. Resubmission of rejected documents shall be performed within ten (10) calendar days. No claim for delay or cost shall be accepted as a result of rejected documents.

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

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

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

**§ 3.12.11** The Architect's review of the Contractor's submittals will be limited to examination of an initial submittal and one resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Architect for evaluation of additional resubmittals.

### **§ 3.13 Use of Site**

**§ 3.13.1** The Owner shall not be liable to the Contractor, subcontractors of any tier, suppliers, their employees or anyone else with respect to the condition of the Project site. The Owner shall have the right to refuse admittance to the site to any agent or employee of the Contractor, its subcontractors of any tier, or its suppliers whose presence the Owner deems hostile to the Owner's interests. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The use of the Owner's assets and property are extremely limited. The Contractor shall fully comprehend the intent of the Contract

Documents pertaining to site and building limitations including, without limitation, Division 1 Specifications sections, the phased construction plan, and the site safety and logistics plan(s).

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

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

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

- .1 In accordance with New York State law, smoking is prohibited anywhere on school property. Violators will be subject to arrest and/or fine of \$1,000 per occurrence. No alcoholic beverages or controlled substances are permitted on school property, and persons under the influence of alcoholic beverages or controlled substances may not enter in or remain on school property.
- .2 In accordance with the United States Gun-Free School Zones Act of 1994, no firearms are permitted within 1,000 feet of any school building, with certain limited exceptions as set forth therein. In addition to such limitations, no firearms shall be brought on school property without the Owner's express prior consent.
- .3 Appropriate protective gear (hard hats, safety shoes, goggles, etc.) are to be worn as required by OSHA standards, the New York State Department of Labor, and prudent practice. Shirts are to be worn at all times. No short pants are permitted.
- .4 Any person who uses inappropriate language, or who is disruptive to the school environment, will be banned from the site.
- .5 The Contractor's personnel shall not converse with school employees, students and or local residents.
- .6 All persons on the Project site will comply with all reasonable instructions regarding conduct and safety which are given by the Architect, the Construction Manager or the Owner's school administrators.
- .7 All construction materials shall be stored in a safe and secure manner. No deliveries will be allowed during school bus drop off or pick up hours as determined by the Owner. All deliveries shall be scheduled and coordinated with the Construction Manager and the Owner's security department. Unexpected or uncoordinated deliveries may be turned away by the Owner or the Construction Manager at the discretion or necessity of the Owner. The Owner's enforcement of this provision shall not be construed by the Contractor or Subcontractor as the basis for a claim of delay in time or monetary damages alleged to have been incurred as a result of refusal of delivery.
- .8 Use of the existing building facilities during construction is prohibited, specifically including toilet rooms, telephones and water fountains.
- .9 The Contractor's schedule shall allow for blackout dates during which no noisy Work will be allowed, as determined by the Construction Manager. The Contractor may consult the Owner's school calendar for all test and examination dates, but these dates are subject to change.
- .10 To gain access to the Work, entrances and parking areas will be designated by the Owner for the Contractor's use. Any vehicles or trucks in non-designated areas may be towed at the Contractor's expense. Gates shall always be locked unless a worker is in attendance to prevent unauthorized entry.
- .11 Should it become necessary to obtain access to the existing building during construction hours for measurements or other non-disruptive work, the Contractor shall be escorted by the Construction Manager.
- .12 All persons must wear photo identification badges at all times while working at the site. Identification badges must be provided by the Contractor for its personnel, including subcontractors, consultants, visitors and others.
- .13 No asbestos containing products are to be used anywhere on this Project.
- .14 No lead containing products are to be used anywhere on this Project.

- .15 Asbestos manifests showing the locations of all known asbestos bearing materials are available in each building, and should be consulted prior to the commencement of any work, including but not limited to demolition.
- .16 Demolition is to occur only when the building is unoccupied. Dust partitions and negative air are to be installed prior to commencing demolition. The Contractor must obtain Construction Manager approval on dust partitions and negative air prior to commencing demolition work. Debris shall be removed by using an enclosed chute or similar sealed system.
- .17
  - (a) Prior to the commencement of Work, the Contractor must submit construction plans, which show the location of dust particles, exhaust & fresh air fans and describe in detail the operation procedures during demolition and construction which may generate dust.
  - (b) All entrances to classrooms shall be sealed with at least 6 mil. polyethylene sheeting to prevent dust created by demolition and construction work from entering the classrooms. Entrances and egress to the work zone shall be covered with a triple flap 6 mil. polyethylene doorway to allow access to the area without the release of dust. The Contractor is, additionally, responsible for all debris and dust infiltrating adjacent and undisturbed areas of the building.
  - (c) Shut down and lock out all electrical and HVAC in the work area. Cut, cap, and seal all duct work where it enters the work area from another space. All duct work and conduit within the space shall be removed during demolition work.
  - (d) The Contractor shall install dust protection barriers and poly sheeting. There shall be no or minimum damage to adjacent surfaces. The Contractor is responsible to repair any damage to existing surfaces.
- .18 Painting or other chemical applications shall be done in the Owner's existing building only when it is unoccupied. Storage of chemicals and painting shall be outside the Owner's existing or new structures, and shall follow manufacturer's storage guidelines.
- .19 Oxygen or other gas containers shall be properly stored and secured per OSHA requirements, to the satisfaction of the Construction Manager. Failure to do so will result in a \$250 back-charge, per occurrence.
- .20 The Contractor is responsible for cleaning its own materials and debris. Failure to maintain a clean work site daily will result in others performing the work at the Owner's request, and the Contractor will be backcharged for the cleaning cost plus construction administration fees. This may be done without the typical 3-day notice to the Contractor.
- .21 The Contractor must send a qualified representative, knowledgeable in the Project and authorized to make decisions on behalf of the Contractor, to every Project meeting.
- .22 The Contractor shall cooperate with the Owner's school principal and custodial staff; however, if any additional work is requested the Contractor shall not proceed unless written approval is received from the Owner. The Contractor will not be compensated for any additional work performed without the Owner's prior written approval.
- .23 Deliveries sent to the Project site will not be signed for or unloaded by the Owner. They will be directed to the construction site and if no employee is on site, the delivery will be rejected, at the Contractor's expense.
- .24 The General Construction Contractor shall be responsible for managing dust and dirt. On the exterior, site shall be watered down frequently to prevent dust clouds from rising. Streets shall be maintained clean per the Construction Manager's request.
- .25 All hot tar roofing shall be installed after school hours or on weekends/holidays only. Kettles shall not be lit until all students have left the Owner's building.
- .26 The Contractor shall submit a weekly work schedule indicating workdays, work hours and manpower allocation.
- .27 No storage of materials will be permitted within the Owner's buildings at any time during construction. The Contractor must provide exterior storage containers when required. The Contractor shall be responsible for securing appropriate space for its material with the Construction Manager prior to delivery. Final location of storage containers shall be determined by the Owner and/or Construction Manager. If insufficient space is available on the site, the Contractor shall provide local off-site storage, storage containers, etc. at its own cost and expense. Should any of the material stored on-site obstruct the progress of any portion of the Work or the Project, this material shall be removed by the Contractor without reimbursement of cost, from place to place or from the premises, as the Construction Manager may direct.

- .28 The General Construction Contractor shall be responsible for maintaining all appropriate site safety signage.
- .29 The Contractor shall be responsible for protecting the Owner's property. All existing shrubs, trees, lawn fixtures, sculptures and miscellaneous equipment shall be protected at all times. Any removals or relocation of said objects, if allowed shall be as directed by the Owner in writing.
- .30 The General Construction Contractor shall provide and service portable lavatories for the duration of construction as provided in the Contract Documents. Lavatories shall be serviced by the General Construction Contractor on a regular basis to maintain sanitary conditions.
- .31 The General Construction Contractor shall protect all existing roofs during construction and shall be responsible for any damage to roofs during construction. The General Construction Contractor shall make all repairs to any damaged areas, as required by the manufacturer of the roof system.
- .32 The General Construction Contractor shall be responsible for providing weather-proof protection over all rough openings, including windows.
- .33 The Contractor shall be responsible for conducting pre-construction walk-throughs and videotaping existing conditions. The Contractor shall schedule a representative of both the Owner and the Construction Manager to be present at this taping. In the absence of this record, the Contractor shall be responsible for paying the costs associated with any and all repairs in an area where the Contractor is working or has worked, as may be deemed necessary by the Owner or the Construction Manager.
- .34 Manufacturers Material Safety Data Sheets (MSDS) shall be available at the site for all products used in the Project.
- .35 No weapons are permitted on the Owner's property by law.
- .36 Neither the Contractor nor any person on its behalf shall, in any manner, engage in discrimination, intimidation or harassment of any person on the Project site.
- .37 Proper attire is required for personal safety and clothing must not sexually explicit or contain messages of a vulgar nature, disrespectful of ethnic or religious groups **or any group covered under the Dignity for All Students Act**, or which promote the use of tobacco, alcohol or drugs.
- .38 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.
- .39 The Contractor will ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work will be performed in such a manner that public areas adjacent to the site of the Work will be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor will use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work; or (2) the Owner's building in the event of partial occupancy, as more specifically described in Section 9.9.
- .40 The Contractor is required to protect its own Work and work areas, preconstruction, during construction and post construction.
- .41 During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.
- .42 The Contractor shall exert utmost care and diligence when working in or near any existing buildings or site work. The absence of protection around such items shall not excuse the Contractor from its liability to provide protection. Any damage to existing buildings, sitework or facilities due to the actions or inactions of the Contractor shall be repaired by and charged to the Contractor.
- .43 The Contractor shall be responsible for the removal and replacement of existing ceiling tiles and grid in areas of the existing building where its Work is required and new ceilings are not scheduled for installation. In the event that the existing ceilings are damaged and cannot be replaced to the satisfaction of the Owner, the responsible contractor shall be liable for the costs of replacing in kind, the existing ceilings with new tile and grid.
- .44 The General Construction Contractor shall provide necessary and required security measures to adequately safeguard the construction site from vandalism and intrusion of unauthorized persons. The General Construction Contractor shall submit its means and methods of security to the Construction Manager for review and comment. The Project site must be secured 24 hours a day, 7 days a week

including holidays. The General Construction Contractor's failure to secure the site as required by this paragraph will result in the Owner engaging the services of such necessary personnel so as to provide such security. No notice will be given the General Construction Contractor of the Owner's intention to engage such security services and all costs and expenses associated with the Owner's security of the site in this regard will be back charged to the General Construction Contractor. While the Owner may have security guards patrolling the project areas, the function of such security guards is not for the purpose of specifically guarding the Contractor's property or operations of work.

- .45 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the written consent of the Owner, which may be withheld in the sole discretion of the Owner.
- .46 Without limitation of any other provision of the Contract Documents, the Contractor will comply with all reasonable rules and regulations promulgated by the Owner or Construction Manager in connection with the use and occupancy of the Project site and the buildings, as amended from time to time by the Owner or the Construction Manager.

**§ 3.13.5** Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.

**§ 3.13.6** The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work will be performed in such a manner that public areas adjacent to the site of the Work will be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor 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** The Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories and toilets. To gain access to the Work, entrances and parking areas will be designated by the Owner for the Contractor's use. Without limitation of any other provision of the Contract Documents, the Contractor will comply with all reasonable rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Owner's building(s), as amended from time to time by the Owner.

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

**§ 3.13.9** Prior to starting Work, the Contractor shall submit a written report to the Owner, Construction Manager and Architect identifying existing damage to roads, walks, lawns, buildings and other property to be affected by this Contract. Failure to submit the report shall render the Contractor responsible for existing damage. The Contractor may request and schedule an inspection with the Owner, Construction Manager and Architect prior to submittal of the report. The Contractor shall obtain the consent of adjoining property owners regarding temporary easements of any other manner of physical encroachment.

#### **§ 3.14 Cutting and Patching**

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

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

such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

**§ 3.14.3** The word "new" used herein shall mean Work which has been or is to be installed under the terms of the Contract for this Project. The word "existing" used herein shall mean existing conditions previous to the award of a Contract for this Project. In order to eliminate cutting and patching as much as possible, the Contractor shall, during the progress of its Work, provide and set proper sleeves, inserts, and other fixtures as required for its new Work and shall give proper and detailed instructions to others where the 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. The Contractor shall refer to the Specifications for proper cutting and patching requirements. Any costs caused by defective or ill-timed Work of the Contractor shall be borne by the Contractor. Cutting and patching of any Work shall be made in such a manner as to not breach any provisions of any guaranty or warranty on existing work left in place or any guaranty or warranty required for the Contractor's new Work. Patching of work shall match existing adjacent surfaces and patchwork shall be disguised completely to hide any trace of patching. All new Work on existing roofs must be provided by a company specializing in performing the Work and approved by the existing roofing material manufacturer. It shall be the responsibility of the Contractor performing the cutting and patching to maintain any existing roofing warranty.

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

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. On a daily basis, the Contractor shall clean the areas in which it has performed work and shall remove all waste, materials, rubbish, its tools, construction equipment, machinery and surplus materials. 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. The Contractor shall completely clean the site of the Work, removing and disposing of all construction-related debris and rubbish, and cleaning all Work-related stains, spots, marks, dirt, mortar smears, plaster smears, paint smears, caulking smears, and other foreign materials from exposed surfaces inside and outside the Owner's buildings and within the Project limit lines.

**§ 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. At its option, the Owner may deduct the cost of clean-up pursuant to this Section 3.15.2 from any payments otherwise due to the Contractor pursuant to this Contract.

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

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

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, 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, and cause its Subcontractors to, defend, indemnify and hold harmless the Owner, Construction Manager, Architect, and their consultants, officers, directors, board members, agents and employees of any of them (collectively, "Indemnitees," individually, "Indemnitee") from and



against all losses, damages, liabilities, actions, causes of action, claims, demands, fines, penalties, judgments, costs (including but not limited to attorneys' fees and expenses incurred in connection therewith and in the enforcement of this indemnification), charges, expenses and demands of whatever kind in connection with or arising from or out of (a) any negligent, willful or wrongful act or omission resulting in bodily injury (including death), personal injury or property damage (including loss of use) by the Contractor, its Subcontractors, Suppliers, their respective officers, employees, servants, agents, suppliers, invitees, successors and assigns (collectively, "Contractor Parties," and individually, "Contractor Party"), (b) performance of or failure to perform the Work or any breach of this Contract or infringement of any patent right by any Contractor Party, or (c) any statutorily imposed liability for injury to employees or failure to comply with any laws or regulations affecting the Work, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Nothing contained herein shall be construed to obligate the Contractor to indemnify, defend, and hold an Indemnitee harmless for claims caused solely by the Indemnitee's negligent acts or omissions.

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

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

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

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

**§ 3.18.6 Intellectual Property.** The Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against any claim or demand for patent fees, royalties, or otherwise on account of any invention, machine, article, process, copyright, or arrangement that may be used by the Contractor in performing the Work, other than as to any of the foregoing expressly called for in the Contract Documents to be so used. In the event of any injunction or legal action regarding such claim or demand that results in stopping the Work in whole or part, the Owner shall have the



right to direct the Contractor to change the manner of performance of the Work to avoid such stoppage, all cost and expense occasioned thereby to be borne solely by the Contractor.

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

**§ 3.18.8** Subject to Section 3.18.9, all obligations of the Contractor under this Section 3.18 to defend the Indemnitees are obligations to provide full defenses at the sole cost and expense of the Contractor, regardless of any alleged culpability on the part of any Indemnitee or any ultimate determination of relative shares of liability of any Indemnitee or limitation of the Contractor's indemnity obligations in light of such determination.

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

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

#### **§ 3.19 Existing Features and Underground Data**

**§ 3.19.1** The location of existing features shown on plans is intended for general information only. The Contractor, alone, is responsible for accurate determination of the location of all structures, and shall not be entitled to any increase in the Contract Sum or Contract Time due to difficulties or distances encountered in the Work, which should have been foreseeable thereby.

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

#### **§ 3.20 Construction Stresses**

**§ 3.20.1** 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, at its own expense, take whatever steps necessary to strengthen, relocate, or rebuild the structure to meet all applicable requirements.

**§ 3.20.2** The Contractor is responsible for restoration or repair of utilities, private property, buildings, pavement, walkways, roads, or other property damaged by its activities under this Agreement.

#### **§ 3.21 Training and Instructions**

**§ 3.21.1** Upon Substantial Completion of the Work, the Contractor shall orient and instruct personnel of the Owner designated by it 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.

### **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.

§ 4.1.1.1 Architect's Consultants: All firms listed on the title sheet of the Specifications, except for the Owner and Construction Manager, are Consultants employed by the Architect, and are agents of the Architect and will make observation of their respective branches of the Work. All changes in the Work must be processed through the Architect. Consultants shall not order extra Work or make changes in the Work.

§ 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 The Architect is the interpreter of the technical requirements of the Drawings and Specifications with regard to questions the Contractor may have concerning its obligations under either. The Architect shall render such interpretations with such promptness as necessary to maintain progress of the Work.

## § 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 and during the correction period described in Article 12. The Construction Manager and Architect have the 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 Multiple Prime Contractors in accordance with the latest approved Project Schedule. The Contractor shall participate with other Contractors and the Construction Manager, the Architect and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary by the Owner or Construction Manager. The approved construction schedules shall be integrated into the Project Schedule and constitute the schedules to be used by the Contractor, other Contractors, the Architect, the Construction Manager and the Owner until subsequently revised.

§ 4.2.4.1 The Contractor shall assume full responsibility for the execution of its Work in the allotted duration times set forth in the Project Schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors

and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

**§ 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. The Construction Manager will assemble each of the Contractor's Applications for Payment with similar applications from other Prime Contractors into a Project Application and Certificate for Payment, all of which will be submitted to the Architect with the Construction Manager's recommendations as to certifications in whole or part by the Architect.

**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such 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, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

**§ 4.2.9** The Construction Manager will receive and promptly transmit to the Architect all submittals from the Contractor such as Shop Drawings, Product Data and Samples. 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.

**§ 4.2.10** 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.

**§ 4.2.11** Review of the Contractor's submittals by the 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 Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.11.1** The Architect's review of Contractor's submittals shall be limited to an initial submittal and one (1) resubmittal. If the Architect is required to review additional submittals because the initial submittal and resubmittal failed to conform to the information given and the design concept expressed in the Contract Documents, the amount of compensation paid to the Architect by the Owner for additional services shall be deducted from the payments to the Contractor.

**§ 4.2.11.2** The review will not be considered complete until an "ACTION" stamp or other written notice to that effect has been received by the Contractor.

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

§ 4.2.13 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.

§ 4.2.14 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.

§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the 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.

§ 4.2.16 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.17 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.

§ 4.2.18 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.

§ 4.2.18.1 If Work is described or indicated in a manner which makes it impossible to carry out the requirements of the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request interpretation before proceeding with the Work. If the Contractor fails to make such a request, no excuse will be entertained for failure to carry out the Work of the Contract Documents. Should a conflict occur in or between Contract Documents, the Contractor is deemed to have included in the Contract Sum the more expensive manner of doing the Work.

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

§ 4.2.20 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 to 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.

*(Paragraph deleted)*

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

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

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

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, within ten (10) days after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.1.1** In no case shall payments be made on the Contract until a complete list of Subcontractors has been submitted by the Contractor to the Construction Manager for review by the Owner, Construction Manager, and Architect. Such list shall not be considered complete if the Owner, Construction Manager or Architect has any reasonable objection to any name listed thereon. Such list shall be submitted and resubmitted if necessary until it is considered complete.

**§ 5.2.1.2** Subcontractors will not be acceptable unless, when requested by the Owner, Architect or Construction Manager, evidence is furnished by the Contractor that the proposed Subcontractor has satisfactorily completed similar subcontracts as contemplated under this Contract, and has the necessary experience, personnel, equipment, plant and financial ability to complete the proposed subcontract in accordance with the intent of the Contract Documents and the Project Schedule. As verification of financial ability, the Owner reserves the right to request and receive up to five (5) years of financial statements, bank references, bond/insurance company references and all other information required to assess financial ability.

**§ 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 and Architect have no objection.

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

**§ 5.2.5** The Maintenance of the Project Schedule is critical. The Contractor shall award subcontracts to entities capable of performing in a manner that will maintain the Project Schedule and require its subcontractors to complete their work in accordance with the Project Schedule.

**§ 5.2.6** Upon written request from or on behalf of the Owner, the Contractor shall provide to the Owner executed, unredacted copies of all subcontracts, purchase orders or other agreements relating to the Work.

## **§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these 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. Each subcontract shall contain provision for execution of lien waivers in form and substance acceptable to the Owner as a condition of payment by the Contractor. The Contractor shall require each Subcontractor to (1) inspect the Project site, including all relevant surfaces and job conditions, before beginning the Work and (2) accept or cite necessary corrections in the Project site, including surfaces or job conditions, before beginning the Work.

§ 5.3.2 The Contractor shall promptly notify the Owner and Architect of any material defaults by any Subcontractor or whether it has terminated its agreement with any of its Subcontractors for any reason.

#### **§ 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 pursuant to Article 14 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 60 days, through no fault of the Subcontractor, 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.

### **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, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions 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.

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

## **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor recognizes and acknowledges that the Project is governed by and subject to the provisions of New York State General Municipal Law §101, et seq., governing the award of contracts on public improvement projects. As such, the Contractor recognizes and acknowledges that other Contractors or Separate Contractors will be performing work on the project in conjunction with it. As such, the Contractor shall afford the Owner's own forces and other Contractors or Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.1.1** The Contractor shall not commit or permit any act which will interfere with the performance of the work of any other Contractor or Separate Contractor performing work on the Project. If the Contractor sustains any damage through any act or omission of Separate or other Contractors having a contract with the Owner for the performance of work upon the site or of work which may be necessary to be performed for the proper execution of the work to be performed hereunder, or through any act or omission of a subcontractor of such Separate or other Contractor, the Contractor shall promptly notify the Owner and the Construction Manager of such damage

**§ 6.2.1.2** The Contractor agrees to defend and indemnify Owner, Architect, Construction Manager, Consultants and Sub-consultants, from all claims made against any of them arising out of the Contractor's acts or omissions or the acts or omissions of any Subcontractor of the Contractor which have caused damage to the Owner, Architect, Construction Manager, Separate Contractor or other Contractor on the Project. The Owner's right to indemnification hereunder shall in no way be diminished, waived or discharged, or by the exercise of any other remedy provided for by the contract or by law. Further, the Owner shall withhold from the Contractor's Contract Sum an amount sufficient to cover such damage and all expenses and costs associated with the damage sustained.

**§ 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.

**§ 6.2.2.1** The Contractor shall promptly correct discrepancies or defects in its Work identified by Separate Contractors as affecting proper execution and results of the work of the Separate Contractors.

**§ 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 or elsewhere in the Contract Documents.

**§ 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.

**§ 6.2.6** Should the Contractor or its Subcontractors cause damage to the work or property of any Separate Contractor or other Multiple Prime Contractor, the Contractor shall, upon due notice, promptly attempt to settle by agreement or otherwise resolve the dispute with the Separate Contractor or other Multiple Prime Contractor. If such separate trade contractor or other Multiple Prime Contractor sues or makes any other claim against the Owner, Construction Manager, or Architect on account of any damage alleged to have been caused by the Contractor or its Subcontractors, the Contractor shall defend, indemnify, and hold harmless the Owner, Construction Manager, and Architect against such claim or proceedings at the Contractor's own expense. The Owner's right to indemnification hereunder shall in no way be diminished, waived or discharged, or by the exercise of any other remedy provided for by the Contract

Documents or by law. Further, the Owner shall be entitled to withhold from the Contractor's Contract Sum an amount sufficient to cover such damage and all expenses and costs associated with the damage sustained.

**§ 6.2.7** When the Work of the Contractor or its Subcontractors overlap or dovetail with that of other Contractors, materials shall be delivered and operations conducted to carry on the Work continuously, in an efficient, workmanlike manner.

**§ 6.2.8** In case of interference between the operations of the Contractor and other Contractors, the Construction Manager will be the sole judge of the rights of each contractor and shall have the authority to decide in what manner the Work may proceed, and in all cases its decision shall be final. Any decision as to the method and times of conducting the Work or the use of space as required in this paragraph shall not be basis of any claim for delay or damages by the Contractor.

**§ 6.2.9** The Contractor, including its Subcontractors, shall keep itself informed of the progress of other Contractors and shall notify the Architect or the Construction Manager immediately in writing of lack of progress on the part of other Contractors where such delay will interfere with its own operations. Failure of the Contractor to keep informed of the work progressing on the Project and failure to give notice of lack of progress by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's Work.

**§ 6.2.10** Delays or oversights on the part of the Contractor or its Subcontractors in getting any or all of the Work done in the proper way, thereby causing cutting, removing and replacing Work already in place, shall not be the basis for a claim for extra compensation or additional time.

**§ 6.2.11** The Contractor shall promptly correct discrepancies or defects in its Work which have been identified by Separate Contractor(s) or other Contractor(s) as affecting proper execution and results of the work of such other Contractor(s).

### **§ 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, only by Change Order, Construction Change Directive or field order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Owner may in its sole discretion reduce the scope of the Contractor's Contract with or without any specific reasons therefor.

**§ 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; a field order for a minor change in the Work may be issued by the Architect alone.

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

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or field order for a minor change in the Work. Additional work performed without authorization of a Change Order will



not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time. No course of conduct or prior dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment of the Owner, shall be the basis for any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. **No amount shall be payable by the Owner to the Contractor for performance of work without a written and fully executed Change Order.**

**§ 7.1.4** Costs for changes in the Work shall not be allowed in excess of usual rentals charged in the area where the Project is located for similar equipment of like size and condition, including costs of necessary supplies and repairs for operating equipment on site in connection with other work unless its use incurs actual and additional costs to Contractor. If equipment not on Site is required for change in work only, cost of transporting equipment to and from Site will be allowed.

**§ 7.1.5** When the Owner or Architect (in association with the Construction Manager) request that the Contractor perform work which is not included in the Contract Drawings or Specifications and which will result in additional cost to the Owner, the Architect shall request that the Contractor submit its proposal for performing such additional work. The Contractor shall submit its proposal to the Construction Manager and Architect for review. The Contractor's proposal shall include a complete itemization of the costs associated with performing its work including labor and materials. All proposals for any work that a Contractor, its Subcontractor(s) or Sub-subcontractor(s) perform in connection with additional work shall be properly itemized and supported by sufficient substantiating data, including but not limited to material descriptions, material quantities, material unit prices, labor trade listings, labor hour quantities, labor trade rates, equipment descriptions and equipment rates with a percentage allowance for overhead and profit as set forth in Section 7.3.11.

**§ 7.1.6** Overtime, when specifically authorized by the Owner in writing, and not as a corrective measure by the Contractor to expedite the progress of construction as ordered by the Owner based on its determination that the performance of the Work has not progressed to the level of completion required by the approved Schedule, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

**§ 7.1.7** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.4. The allowable overhead and profit mark-up shall include, but not be limited to, the following:

- .1 home office expense;
- .2 field office expense;
- .3 supervision;
- .4 project management & estimation; and
- .5 small tools & equipment.

**§ 7.1.8** Unit prices shall be submitted in the Bid Form for various items as set forth therein, and are subject to approval and acceptance by the Owner. The Owner reserves the right to reject any unit price which is unreasonable or unbalanced, as compared with prevailing costs, or as compared with the unit prices submitted by other bidders for the Project. Approved unit prices quoted shall include all profit, overhead, bonds, insurance, labor, materials, equipment, tools, applicable taxes necessary to complete the work item and shall apply to all work added or work deducted.

## **§ 7.2 Change Orders**

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

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

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

deletions from the Contract Sum shall not be made until the Architect has issued an appropriate Change Order. All Change Orders must have the approval of the Owner, Construction Manager and Architect in writing.

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

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

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

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

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

### **§ 7.3 Construction Change Directives**

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

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

**§ 7.3.2.1** If the Owner and the Contractor cannot agree that the requested Work properly forms the basis for a Change Order or on the sum by which the Contract is to be increased or reduced based upon changes to the scope of Work, the Architect or Construction Manager shall issue a Construction Change Directive signed by the Owner, Construction Manager and Architect reflecting the addition to, or removal of, the scope of Work and the Contractor shall (a) in the case of additional work to be performed by the Contractor, perform such additional work in an expeditious manner so as not to delay the Work of the Contractor or other Contractors working at the site and keep records of its performance of such additional work, and (b) in the case of work to be removed from the scope of the Contractor's Work, refrain from taking any steps in connection with the work associated with the deduction of the Contractor's Work. The Construction Change Directive shall include: (a) a description of the work being added or removed from the Contractor's scope of Work; (b) the amount the Owner has determined to be the cost associated with the additional work (as those costs are identified and limited in Section 7.3.4) or removal of the scope of the Contractor's Contract until the Owner and the Contractor agree upon the increase or decrease in the Contractor's Contract Sum, or until a claim filed by the Contractor has been determined; and (c) the extent to which the Contract Time will be adjusted as a result of the change in the scope of Work. Any claims must be filed in accordance with the requirements set forth in Article 15 of these General Conditions. Failure to timely file any claim in accordance with requirements set forth therein shall constitute a waiver of such claim.

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon (unit prices shall be deemed to include all costs and expenses for the Contractor's changed Work, including costs of general conditions, insurance/bonds and overhead and profit attributable to the change);
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee subject to the limitations of Section 7.3.11; or
- .4 As provided in Section 7.3.4 subject to the limitations of Section 7.3.11.

**§ 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 Section 7.3.11. In such case, and also under Section 7.3.11, 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 Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- .2 Actual costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Actual rental costs of machinery and equipment, exclusive of hand tools, rented from third parties; and
- .4 Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the additional work.

**§ 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 (1) the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time or (2) the amount of the increase or decrease in the Contract Sum and Contract Time as provided in Section 7.3.2.1. Any claims must be filed in accordance with the requirements set forth in Article 15 of these General Conditions. Failure to timely file any claim in accordance with requirements set forth therein shall constitute a waiver of such claim.

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

**§ 7.3.8** When the Owner or Architect request that portions of the Contractor's Work originally included in the Drawings or Specifications be deleted and which will result in a reduction of the Contract Sum, the Architect shall request that the Contractor submit its proposal for deleting the scope of such Work from the Contract. The Contractor's proposal shall include a complete itemization of the costs associated with deducting such Work including labor, materials, overhead and profit. The Contractor shall not be entitled to retain its overhead or profit for such work nor shall any of its Subcontractors which were to perform the work being deducted from the Contractor's scope of Work. Additionally, the Contractor shall reflect the reduced cost of premiums on bonds which are to be supplied herein as a result of such change. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to

be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

**§ 7.3.11** The limit for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, fifteen percent (15%) of the direct cost for labor and materials.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, maximum of five percent (5%) of the amount due the Subcontractor for the Contractor's overhead and profit. For the Subcontractor, for Work performed by the Subcontractor's own forces, ten percent (10%) of the direct cost for labor and materials. The total combined overhead and profit for a change order shall be limited to 15% of the direct cost regardless if the Work is performed by the Contractor or the Subcontractor.
- .3 The markup on any part of the Work a Subcontractor subcontracts will be limited to one overhead and profit figure, in addition to the Contractor's overhead and profit markup. The Subcontractor and Sub-subcontractor may divide the overhead and profit amount as they agree upon.
- .4 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7.
- .5 In order to facilitate checking of quotations for extras and credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and subcontracts. Labor and material shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also.
- .6 Overhead and profit mark-up shall include, but not be limited to, the following:
  - .1 home office expense;
  - .2 field office expense;
  - .3 supervision;
  - .4 project management & estimation;
  - .5 small tools & equipment;
  - .6 research & layout;
  - .7 inspections & permits;
  - .8 material handling;
  - .9 record drawings; and
  - .10 safety and cleanup

#### **§ 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.

### **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. The date shall not be postponed or extended by the failure to act of the Contractor or persons or entities for whom the Contractor is responsible to act.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of final completion is the date certified by the Architect and Owner in accordance with Section 9.10. Unless

otherwise agreed in writing by the Owner, the Contractor agrees that Final Completion shall occur not more than 30 calendar days after the date of Substantial Completion.

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

**§ 8.1.5** Work remaining to be completed after Substantial Completion, shall be limited to items which can ordinarily be completed within a thirty (30) day period (one month) before final payment is made.

## **§ 8.2 Progress and Completion**

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

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

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

**§ 8.2.4** 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 (including the equitable value of the changes), or any disputes or disagreements as to the Work or extra work.

**§ 8.2.5** If the Contractor does not achieve the completion date and milestone date for each work item in the Contract, a milestone or critical path date reflected on the Project Schedule, or the date of Substantial Completion for the Work or any part thereof, the Contractor shall be responsible for all direct and consequential damages to Owner arising from any delay of the Contractor, its Sub-Contractors, Sub-subcontractors, and suppliers, in performing or completing the Work in accordance with the time requirements of the Contract, by way of example but not as a limitation: (i) additional architectural and construction management fees related to extended services; (ii) additional project management costs; (iii) financing costs (including delayed or lost State Building Aid); (vi) temporary storage and dislocation costs; and (v) costs related to the disruption or relocation of the Owner's personnel, academic and other departments, including equipment and machinery, affected by the Owner's inability to timely occupy the Project facilities. The Owner shall have the right to deduct the amount of the foregoing damages from any payment then due or thereafter becoming due from the Owner to the Contractor. If the Contract Sum is exhausted, the Contractor shall pay such amounts to the Owner on demand.

**§ 8.2.6** In the event the Contractor fails to complete all Work under this Contract by said scheduled dates, the Contractor will not be permitted to perform any work during normal school hours without the express written authorization of the Owner. Such Work shall only be performed after school hours, Saturdays, Sundays, holidays or periods when school is unoccupied at no additional cost of any kind to the Owner. In addition to damages incurred by the Owner in connection with the Contractor's delay, the Contractor shall be liable for all costs incurred by the Owner to provide staff, Architect and Construction Manager personnel as required to make facility accessible by Contractor and perform inspections during such off hours.

**§ 8.2.7** The Contractor understands that in order to meet the requirements of the Project schedule, including intermittent milestone and critical path dates set forth in the Contract Documents, it may be required to work its personnel and equipment overtime on regular work days and on Saturdays and holidays, the cost of which is included in the Contract Sum. If the Owner specifically approves in writing reimbursement for overtime, the Contractor shall be paid by the Owner on the basis of the premium payment.

§ 8.2.8 The Owner shall have the right at any time to modify the Project Schedule; to suspend, delay or accelerate, in whole or in part, the commencement or execution of the Work or any portion thereof or to vary the sequence thereof; and to prescribe the time, order and priority of the various portions of the Work, and all other matters relating to the scheduling of the Work. The Contractor shall not be entitled to additional compensation for any such decisions made by the Owner.

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed in the commencement or progress of the Work as a result of: Acts of God (such as tornado, flood, hurricane, pandemics [see exception below], epidemics, etc. making performance temporarily impossible); the negligent acts or omissions of the Owner, Architect, Construction Manager, other Contractors, or their agents or employees; strikes, lockouts or other labor disturbances (not arising from the labor practices of Contractor or its Subcontractors, Suppliers, or Sub-subcontractors to comply with their obligations arising under the Contract); unusually adverse weather conditions; freight embargoes (provided that delays by the Contractor, its Subcontractors, Sub-subcontractors or Suppliers do not constitute an excusable cause of delay); changes in the work to be performed by the Contractor (not caused or resulting from the failure of the Contractor or its Subcontractors, Suppliers or Sub-subcontractors); or changes to laws or regulations after the effective date of the Contract, provided the Contractor has used all reasonable efforts to mitigate the foregoing causes; then the Contractor shall be entitled to a day for day extension of the Contract Time for the established delay to the critical path of the Work subject to the provisions of this Article 8 and Article 15. All other delays of the Project, including but not limited to, Architect review and/or approval of shop drawings or other submittals, requests for information, clarifications, samples, and change orders; Owner schedule; Architect certification of payment; payment by Owner of Contractor's Application for Payment; coordination among the Multiple Prime Contractors; unavailability of materials and/or equipment; surveying/testing; closeout, etc. are deemed to be foreseeable and contemplated and, therefore, shall not form the basis for a claim for an extension of time or additional compensation by the Contractor. **Conditions caused by the COVID-19 pandemic or epidemic, or any variants of the disease, shall not form the basis of an excuse under this section. No additional time or compensation shall be provided to the Contractor for COVID-19 or any variant.**

§ 8.3.1.1 The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused or could not have been anticipated by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (3) is of a duration of more than one (1) day.

§ 8.3.1.2 The Contractor's inability to secure sufficient personnel for the performance of the Work shall not constitute a basis for an extension of time. The Contractor shall not be entitled to an extension of time if the Architect or Construction Manager stops the Work due to the existence of or reasonable suspicion of a deficiency in the Work.

§ 8.3.1.3 An extension of the Contract Time, if requested by the Contractor, shall only be considered after the Contractor has made reasonable effort to recover the lost time. An extension, or extensions, of time may be granted subject to the provisions of this Article 8, but only after written application therefore by the Contractor. An extension of time shall be only for the number of days of delay which the Architect may determine to be due solely to the causes set forth in the application 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 or Architect.

§ 8.3.1.4 All requests for additional time shall be made in writing, delivered to the Construction Manager within five (5) days from the time when the circumstance with potential for delay becomes reasonably known to the Contractor, supported by documentation which demonstrates to the Architect and Construction Manager's satisfaction that the critical path of the Work has been significantly altered by the delays to the activities in question, and that the Project schedule cannot be maintained by re-ordering other activities within the Project at no cost. This request shall also contain, at a minimum, the following information: (1) date of start of delay; (2) specific cause of delay; (3) effect of delay on construction progress; and (4) date of termination of delay. Upon receipt of the Contractor's request for an extension of time, the Owner will ascertain the facts and extent of the delay, and may, in its sole discretion, extend the time for completion of the Contractor's Work when in its judgment such an extension is justified. The Owner's determination will be final and binding in any litigation commenced by the Contractor against the Owner which arises out of the Owner's denial of an extension of time to the Contractor. Any approval of an extension of the Contractor's

time to complete its Work shall be memorialized by written change order, signed by the Owner, Contractor, Architect and Construction Manager. When the Owner determines that the Contractor will be granted an extension of time, such extension shall be computed in accordance with the following: for each day of delay in the completion of its Work, the Contractor shall be allowed one day of additional time to complete its Contract. The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently; rather, only the actual period of delay as determined by the Owner or its Architect may be allowed.

**§ 8.3.1.5** Failure of the Contractor to give written notice as required by Section 8.3.1.4 or to strictly comply with the requirements of Article 8 shall be deemed conclusively to be a waiver and release of such claim, and such notice shall be a condition precedent to the Contractor's right to make a claim for any claim arising out of, under or in connection with the Contractor or the performance of the Work.

**§ 8.3.2** Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted and justified under Section 8.3.1, shall be the sole remedy of the Contractor for, and the Contractor waives its right to any claim for damages to the extent arising from, any (1) delay in the commencement, prosecution, or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity or acceleration; or (4) other claims for disruption, interference, inefficiencies, impedance, hindrance, acceleration, resequencing, schedule impacts, lack of timeliness by the Owner or its consultants, and lack of coordination, errors or omissions in the design of the Project, cumulative impact of multiple change orders, delay and other impacts (collective referred to herein as "Delay(s)"). In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any Delay, including, but not limited to, delay costs, loss of productivity or efficiency, lost profits, extended jobsite general conditions and home office overhead, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, but not limited to, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as interference, hindrance or obstruction with the Contractor's performance of the Work and shall not entitle the Contractor to any additional compensation. The Contractor shall include a no-damages-for-delay clause in all subcontracts for the performance of the Work.

**§ 8.3.3** Delays that affect the scheduled completion of the Work and are attributable to interference between Multiple Prime Contractors, Separate Contractors, Subcontractors, suppliers, utility companies or municipalities, shall be compensated solely by the granting of an extension of time to the Contractor by the Owner to complete the Work without charges to the Owner. The parties acknowledge that the Contract Time takes into account the time necessary for review of shop drawings, design errors or omissions, coordination amongst Contractors, change orders, delays incurred by seasonal limitations and other administrative processing by all parties involved and are not compensatory. The Contractor agrees that it has included in its Bid prices the additional cost of doing work under this Contract caused by interference of other Prime Contractors, Separate Contractors, Subcontractors, etc. and the other non-compensatory Delays described above.

**§ 8.3.4** When the Contract Time has been extended, as provided under Section 8.3, such extension of time shall not be considered as justifying extra compensation to the Contractor for administrative costs, home office, estimating, extended general conditions or other similar impact costs. The Contractor acknowledges that in agreeing to the Contract Sum it assessed the potential impact of the limitations in Section 8.3.2 on its ability to recover additional compensation in connection with a Work delay, interference, impact or hindrance and agrees that those limitations shall apply regardless of the accuracy of the Contractor's assessment or actual costs incurred by the Contractor.

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

**§ 8.3.6** The intent of the Contract is for Work to follow a logical sequence. The Contractor, however, may be required by the Owner, Construction Manager or Architect to temporarily omit or leave out any section of Work or perform Work out of sequence. Out of sequence work and come back time to these areas shall be performed at no additional cost to the Owner.

**§ 8.3.7** Claims relating to Contract Time shall be made in accordance with applicable provisions of Article 15.

## § 8.4 LIQUIDATED DAMAGES

§ 8.4.1 Contractor realizes that time is of the essence on this Contract and the Construction Schedule shall be submitted per Sections included herein. In the event the Contractor fails to submit a Construction Schedule by said date, the sum per calendar day of (\$1000) ONE THOUSAND DOLLARS will be subtracted from the Contract Sum due the Contractor in the form of a change order.

§ 8.4.2 Contractor realizes that time is of the essence on this Contract and the completion date for any work or the date of Substantial Completion shall be no later than the date indicated in these Contract Documents. The Contractor understands that the substantial disruption of the School District's educational process will occur if the project is not completed by the dates outlined in Division 1 of the specifications. In the event that the Contractor fails to complete any work or substantially complete the work under the Contract by said schedule, the sum per calendar day of (\$1,000) ONE THOUSAND DOLLARS will be deducted from the Contract Sum due the Contractor in the form of a change order, except in cases where a delay is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including acts of God, or of the Public enemy, acts of the government, in either sovereign or contractual capacity, fires, floods, epidemics, **(except COVID-19 or its variants)** quarantine restrictions **(except from COVID-19 or its variants)**, freight embargos, or delays of Subcontractors or suppliers due to such causes. Delays in acquisition of materials other than by reason of freight embargoes will not constitute a delay excusable under this provisions unless approved by the Owner in writing.

Within five (5) calendar days from the occurrence of any such delay, the Contractor shall notify the Owner in writing the cause of delay. The Owner will ascertain the facts and extent of the delay, and extend the time for completing the Work when in his judgment the findings of fact justify such an extension. Owner's findings of fact will be final and binding on any litigation.

The said sum per calendar day shall constitute the Liquidated Damages incurred by the Owner for each day of the delay beyond the agreed upon dates. Such Liquidated Damages shall be in addition to any other damages (other than by reason of delay) Owner may incur as a result of Contractor's breach of Contract.

In the event the Contractor fails to complete all work under this Contract by said scheduled dates, the Contractor will not be permitted to perform any work during the normal school hours. Such work shall only be performed after school hours, Saturdays, Sundays, holidays or periods when school is unoccupied at no additional cost of any kind to the Owner. In addition to Liquidated Damages, the Contractor shall be liable for all additional costs incurred by the Owner to provide staff, Architect, and Owner's Representative personnel as required to make facility accessible by Contractor and perform inspections during such off hours. In the event that the completion dates are not met, inspections will be performed once each week unless, the Owner or the Architect determine, at their sole discretion, that additional inspections are needed.

All costs incurred by the Owner, Owner's Representative, Architect, Architect's consultants, for the cost of additional inspections, at the rate of (\$800) EIGHT HUNDRED DOLLARS per inspection or more due to time requirements, will be subtracted from payment due the Contractor. If the amount due the Contractor for payment is insufficient, any deficiency shall be paid by the Contractor to the Owner. Additionally, a cost of \$750 per day for extended Construction Management time will be charged to the Contractor causing the delay.

## 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. Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold or offset any payment to the Contractor if and for so long as the Contractor fails to perform any of its obligations under any of the Contract Documents; provided, however, that any such holdbacks shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any default or failure of performance by the Contractor.



§ 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

§ 9.2.1 Within 30 days of Contract Award, the Contractor shall submit to the Construction Manager a schedule of values allocated to various portions of the Work for each building, prepared in the currently authorized form of AIA Document G703 – Continuation Sheet and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. 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 schedule of values shall state the names of all Subcontractors, Sub-subcontractors and material suppliers and the amounts to become due to each breakdown by specification section. The schedule of values shall contain, along with individual work items, separate line items for (1) mobilization, bonds, insurance, etc., (2) value of administrative close out submittals, (3) Allowance(s) if required elsewhere in the Project Manual, (4) separate subtotals by building, and (5) buildings further separated between "Additions/New Construction" and "Renovations/Reconstruction" as applicable. At the direction of the Architect, it shall include quantities, if applicable. The total for all items shall aggregate the Contract Sum.

§ 9.2.2 Any schedule of values that fails to include sufficient detail, is unbalanced or exhibits "front loading" of the value of the Contractor's Work will be rejected. Furthermore, if the schedule of values has been approved by the Construction Manager and the Architect and is subsequently used, but later is found by the Construction Manager or Architect to be improper for any reason, sufficient funds shall be withheld from the Contractor's future applications for payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Contractor's Work.

§ 9.2.3 The schedule of values shall be drafted so as to reflect multiple construction sites, multiple locations within each site, additions versus renovations of work, and the like so as to satisfy any New York State Education Department requirements for the Project.

## § 9.3 Applications for Payment

§ 9.3.1 In accordance with Article 5 of the Agreement and the Payment Procedures in the Specifications, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, notarized and reflecting retainage as provided elsewhere in the Contract Documents. Applications for Payment will be in the currently authorized form of AIA Document G732 - 2019, "Application and Certificate for Payment," accompanied by AIA Document G703-1992, "Continuation Sheet," and must include (add and/or deduct) adjustments to the Contract Sum resulting from Work performed under approved Change Orders (specified under Article 7) and shall be shown separately on the application for previous and current periods. Each Application and Certificate of Payment shall be accompanied by two (2) copies of the Pay Application Lien Waiver and Release in the form set forth in the Payment Procedures in the Specifications. Each Application for Payment shall be prepared in such form and supported by such data to substantiate the Contractor's right to payments as the Owner, Construction Manager or Architect may require such as copies of requisitions from Subcontractor and material suppliers. Each Application for Payment forwarded to the Owner by the Construction Manager or Architect shall be subject to audit and approval by the Owner in accordance with the Owner's normal audit.

§ 9.3.1.1 The Construction Manager and Architect shall review the application for payment submitted by the Contractor and shall advise the Contractor of any adjustments to be made thereto. The Construction Manager and/or the Architect may make such adjustments under the circumstances set forth in Section 9.5.1. If any such adjustments are made by the Architect or Construction Manager, the Contractor shall submit an original itemized revised application with all documentation required by Section 9.3.1.

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

§ 9.3.1.3 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 material supplier unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.4** Until Substantial Completion, the Owner shall pay ninety-five percent (95%) of the amount due the Contractor on account of progress payments, less an amount necessary to satisfy any claims, liens, or judgments against Contractor, which have not been suitably discharged. In accordance with Section 9.8.5, the Owner shall pay the entire amount retained from previous progress payments less two (2) times the amount required to complete items identified in a list prepared in accordance with Section 9.8.2 and the amount required to satisfy any outstanding claims, liens, or judgments against the Contractor.

**§ 9.3.1.5** The Contractor and its Subcontractors are required to submit certified payroll information to the Owner in accordance with New York State Law.

**§ 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 Project site for subsequent incorporation in the Work. If approved in advance in writing 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. The costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site shall not increase the Contract Sum.

**§ 9.3.2.1** Payment may be made for materials and equipment delivered and suitably stored on-site for future incorporation in the Work, subject to the following conditions:

- .1 Request for payment shall be considered for material or equipment, which is in short or critical supply, which has been specially fabricated for the Project or, at the discretion of the Construction Manager and Architect, for other materials or equipment.
- .2 A request for payment of material stored on-site must be made by the Contractor ten (10) days prior to actual, monthly cut-off date for Payment Applications.
- .3 Procedures required by the Owner shall include, but 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, provisions of opportunity for the Construction Manager's and Architect's visual verification that such materials and equipment are in fact in storage; and, if stored off-site, submission by the Contractor of verification that such materials and equipment are stored in a bonded warehouse.
- .4 All such materials and equipment, including materials and equipment stored on-site but not yet incorporated into the Work, upon which partial payments have been made shall become the property of the Owner, but the care and protection of such materials and equipment shall remain the responsibility of the Contractor until incorporation into the Work and accepted by the Owner at substantial completion, including maintaining insurance coverage on a replacement cost basis without voluntary deductible.

**§ 9.3.2.2** Payment may be made for materials and equipment delivered and suitably stored off-site for future incorporation in the Work, subject to the following conditions:

- .1 The Contractor shall submit: a written validation by the Owner, Construction Manager or Architect that such materials are stored safely off site, in the quantities and condition stated by the Contractor; a copy of an invoice for the material and equipment; a bill of sale or equivalent indication of the quantity and value of the material or equipment; a written statement indicating the location and method of storage; and property insurance certificate or rider covering the specific material or equipment, which shall name the Owner as an additional insured party.
- .2 The Contractor shall submit a verification that such materials and equipment are stored in a bonded warehouse.
- .3 A request for payment of material stored off-site must be made by the Contractor 10 days prior to actual, monthly cut-off date for Payment Applications.
- .4 All such materials and equipment upon which partial payments have been made shall become the property of the Owner, but the care and protection of such materials and equipment shall remain the responsibility of the contractor until incorporation into the Work and accepted by the Owner at substantial completion, including maintaining insurance coverage on a replacement cost basis without voluntary deductible.

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

**§ 9.3.4** The Contractor further expressly undertakes to defend the Indemnitees (as defined previously in Section 3.18), at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Indemnitees as a result of liens filed against the Owner, the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor or any portion of the property of any of the Indemnities (referred to collectively as liens in this Section 9.3.4). The Contractor hereby agrees to defend, indemnify, and hold Indemnitees 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.

**§ 9.3.5** 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 an amount not less than One Hundred Fifty percent (150%) of such lien claim. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3, including, without limitation, the duty to defend and indemnify the Indemnities in an action on the lien, lien discharge bond or underlying debt. 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.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Construction Manager will, within seven (7) 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 (7) days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part 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 (7) 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 (7) 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 shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application 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 and the quality of the Work is in

accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

**§ 9.4.4** The Architect's issuance of a Certificate for Payment shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the 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, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is 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 separate 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 the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material 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 in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 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. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment 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, another Prime Contractor or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 receipt by the Owner of a notice of withholding from the New York State Department of Labor or other administrative agencies having jurisdiction over the Project;
- .9 failure to comply with applicable federal, state or local statutes, regulations, and/or laws, including, without limitation, laws and regulations applicable to the provision of certified payrolls;
- .10 failure of the Contractor to provide executed performance and payment bonds and a current certificate of insurance and endorsements;
- .11 reasonable evidence that the Work has not progressed as indicated on the Application for Payment;
- .12 damages caused to the Owner, Construction Manager, the Architect or another Contractor as a result the Contractor's performance of its Work;
- .13 the Architect's and/or the Construction Manager's discovery or observation of work which has been previously paid for by the Owner which is defective and/or incomplete;
- .14 The amount requested exceeds the percent completion of Work on the site; or
- .15 breach of this Agreement.

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

**§ 9.5.2** If the Contractor disputes any determination by the Owner, Construction Manager or Architect with regard to any Certificate for Payment or in the event of a bona fide dispute between the Contractor and Owner, the Contractor nevertheless shall expeditiously continue to prosecute the Work and may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the above reasons for withholding certification or the Owner's withholding of payment 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, or if the Owner otherwise deems it necessary to protect its interests or the interests of the Project, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers 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.

**§ 9.5.5** Notwithstanding anything above to the contrary, the Owner has the right to withhold payment to the Contractor to protect itself against damages incurred or which may be incurred as a result of the Contractor's breach or negligence, including, but not limited to, the items set forth in Section 9.5.1. With respect to any liens, claims, or other circumstances for which the Owner is entitled to withhold payments pursuant to decisions by the Architect pursuant to Section 9.5.1, the Owner shall be entitled to withhold a sum equal to twice the stated amounts of such liens or claims, or, where there is no stated amount, twice the amount determined by the Architect to be necessary to protect the interests of the Owner. The Owner will release payments withheld due to liens provided that the Contractor obtains a discharge of record of such lien, by bonding or otherwise. By posting a lien discharge bond, however, the Contractor shall not be relieved of any responsibilities or obligations under the Agreement, including, without limitation, the duty to defend, indemnify, and hold harmless the Indemnitees (as defined previously in Section 3.18). The cost of any premiums or other expenses incurred in connection with such bonds or other means of discharge of record shall be the sole responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

**§ 9.5.6** If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract, including but not limited to these General Conditions, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained herein to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents unless such requisition is not in accordance with the terms of the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held in trust by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contracts with the Contractor for which payment was made by the Owner. The Contractor shall strictly comply with any common law, statutory, or decisional law trust fund requirements in the State of New York (including, without limitation, the requirements of New York Lien Law Article 3-A), and hereby agrees that the Owner has the same rights as any beneficiary of such trusts to examine the books and records of the Contractor to determine such compliance, from time to time at the Owner's sole discretion. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such

Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such 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 similar manner.

**§ 9.6.2.1** Within seven (7) days of receipt of a payment from the Owner, the Contractor shall pay each of its Subcontractors and suppliers for work performed and materials furnished by them as reflected in the payment from the Owner, less an amount necessary to satisfy any outstanding claims, liens, or judgments and less a retained amount of not more than 5%, except that the Contractor may retain not more than 10% provided that prior to entering into a Subcontract with the Contractor, the Subcontractor is unable or unwilling to provide a performance bond and labor and material payment bond both in the full amount of the subcontract at the request of the Contractor. The Contractor shall not retain portions of the proceeds owed any Subcontractor or supplier from the Owner's payment to the Contractor for the "contract balance." Similar provisions apply to the Subcontractor and/or supplier paying each of its Subcontractors and suppliers. Nothing in this Section shall create in the Owner any obligation to pay, or to ensure that the Contractor pays, any Subcontractor or supplier, or any relationship in contract or otherwise, implied or expressed, between any Subcontractor or supplier and the Owner. The Contractor agrees that it shall comply with the payment requirements of Section 106-b(2) of the New York General Municipal Law, as amended, and that to the extent there is any conflict between that statutory section and the provisions of this Section 9.6.2.1, the provisions of the statute shall prevail.

**§ 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 material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to its 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** Payments received by the Contractor for Work properly performed by Subcontractors and 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, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

*(Paragraph deleted)*

## **§ 9.7 Failure of Payment**

**§ 9.7.1** If, through no fault of the Contractor, the Construction Manager and Architect do not issue a Certificate for Payment within 20 days of the Construction Manager's receipt of the Contractor's Application for Payment or if, through no fault of the Contractor, the Owner does not pay the Contractor the amount certified by the Construction Manager and Architect, subject to the Owner's right to withhold payment under the terms of the Contract Documents, within 30 days of the date established for such payment in the Contract Documents, then the Contractor may, upon seven (7) additional days' written notice and opportunity to cure to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. To the extent it is determined that payment to the Contractor was improperly held through no fault of the Contractor and the Contractor elected to stop its Work consistent with the procedure set forth in this Section, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up as provided for in the Contract Documents. However, if the Contractor stops its Work and it is determined that the

Owner had the right to withhold payment under the terms of the Contract Documents, then the Contractor shall be responsible to the Owner for all costs and damages (including attorneys' fees) arising from such stoppage of Work and the Contractor shall not be entitled to any adjustment in the Contract Sum or the Contract Time. This Section shall not apply: (a) to the extent that the Contractor owes to the Owner any amount pursuant to the provisions of this Contract, or (b) to the extent the Owner is required to expend amounts to purchase additional insurance on behalf of the Contractor to meet the insurance requirements of this Agreement.

**§ 9.7.2** If the Owner is entitled to payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs or expenses to cure any default of the Contractor or to correct defective work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** The date of Substantial Completion of the Project or a designated portion thereof is the date when construction is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the entire Project (or such portion thereof as Owner earlier elects to occupy or utilize) for the use for which it is intended. Minor items of completion or correction ("Punch List Work") may be performed after Substantial Completion, provided that such items can and shall be performed at such times and in such manner that such Work does not unreasonably interfere with the Owner's occupancy and use of the Project. Substantial Completion shall not be deemed to exist until (a) the Owner receives a Certificate of Occupancy for the Project (or such portion as elected by Owner) if such Certificate of Occupancy is required, and any other permits, approvals, licenses and any other documents from governmental authorities having jurisdiction therefore necessary for the beneficial occupancy of the Project and (b) the Contractor, Construction Manager, Architect and Owner have agreed upon a schedule for final completion and to provide the Owner with all as-built drawings, operating manuals, warranties and other required closeout documents. Warranties called for by the Agreement or by the Drawings and Specifications shall commence on the date of Substantial Completion of the Project or designated portion thereof, or any later date that the parties agree. This date shall be established by a Certificate of Substantial Completion signed by the Owner, Contractor, Architect and Construction Manager.

**§ 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 which shall identify all non-conforming, defective and incomplete Work and establish the date of commencement of warranties in connection with any such Work. 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 requirements of 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 Construction Manager or 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. If the Architect and the Construction Manager are required to perform additional substantial completion inspections because the Work fails to be substantially complete, the amount of compensation paid to the Architect and the Construction Manager by the Owner for additional services shall be deducted from the final payment to the Contractor.

**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work 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, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all Punch List Work, which timeframe



shall not exceed 30 days. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such 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.

**§ 9.8.5.1** In conformance with New York General Municipal Law Section 106-b(1)(a), upon proper execution of Certificate of Substantial Completion of Work, the Contractor shall submit a requisition for payment of the remaining amount of the Contract Sum. Upon certification of payment by the Architect, the Owner will approve and promptly pay the remaining amount of the Contract Sum less two times value of any remaining items to be completed or corrected and less an amount necessary to satisfy any claims, liens or judgments against Contractor which have not been suitably discharged. Such payment shall be made under terms and conditions governing final payment except that the Owner's making of such payment shall not constitute the Owner's waiver of any objection to all or any portion of the Work performed by the Contractor or any claims the Owner may then have against the Contractor.

**§ 9.8.5.2** Neither the requisition for payment stipulated in Section 9.8.5.1 nor any portion of retained percentage shall become due until the Contractor submits to the Construction Manager:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or the Owner's property might in any way be responsible, have been paid or otherwise satisfied, the form of which will be the currently authorized AIA Document G706, "Contractor's Affidavit of Payment of Debts and Claims";
- .2 consent of all sureties, if any, to such payment, the form of which will be the currently authorized AIA Document G707A, "Consent of Surety to Reduction in or Partial Release of Retainage," but which will not be required if the amount withheld under Section 9.8.3.1 exceeds the amount of retainage; and
- .3 if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases, and waivers of liens arising out of contract to such extent and in such form as may be designated by the Owner.

**§ 9.8.5.3** As the Punch List Work is satisfactorily completed or corrected, the Contractor may submit a requisition for payment of these items. The Contractor shall submit with each such requisition for payment affidavits, consents of surety, and other data as described in Section 9.8.5.2 covering work for which payment is requested. Upon certification of such requisitions by the Architect and Construction Manager, the Owner will approve and promptly pay the requisition less an amount two times that which is necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

**§ 9.8.5.4** Where the Project includes heating, air conditioning, electrical, communication, data or other systems which 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 Contractor shall provide complete start up and commissioning of the systems with a detailed check list as recommended by the equipment or system manufacturer. The retained amount shall approximate five percent (5%) of the cost of the systems as determined by the cost breakdown submitted. The guaranty/warranty period for such systems will not commence until after such Architect approval.

**§ 9.8.5.5** The Contractor shall complete the Punch List Work for the Project no later than 30 days after Substantial Completion of the Project. The Contractor shall be fully liable to the Owner for all damages suffered by the Owner as a result of delay in achieving final completion of the Work, including without limitation, additional architectural and construction management fees related to extended services.

**§ 9.8.6** If the Architect or the Construction Manager is 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 as required under Section 11.3.1.5 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 in order to determine and record the condition of the Work.

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

**§ 9.9.4** The Contractor shall cooperate with the Owner in order to make portions of the Project available as soon as possible.

**§ 9.9.4.1** The Project site and buildings, whether work of the Contractor is partially or fully completed or not, are property of the Owner who shall have certain rights and privileges in connection with use of same.

**§ 9.9.4.2** Should there be, in the opinion of the Architect or Construction Manager, unwarranted delay on part of any Contractor in completion of incomplete or defective work or other Contract requirements, and the Architect so certifies, the Owner may have full or partial use and occupancy of any or all portions of buildings as required for moving in or installing furniture, fixtures, supplies, or equipment and for general cleaning and maintenance work. In such event, the Contractor whose unfinished work is done subsequent to installation of furniture, fixtures, equipment, etc., shall be responsible for the prevention of any damage to such installation. Such use or occupancy by the Owner shall in no instance constitute acceptance of any of the Work.

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

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a written 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 will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, 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 12.2 shall be set by the Architect at his discretion, but not later than the date of the final Certificate for Payment.

**§ 9.10.1.2** If the Architect and the Construction Manager are required to provide additional services, extend the duration of services to the Owner, and/or perform additional final inspections because the Work fails to comply with the requirements of the Contract Documents, or the Contractor did not complete the Work in accordance with the construction schedule or Project schedule, the amount of compensation paid to the Architect and the Construction Manager by the Owner for additional services shall be deducted from the final payment due 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) all closeout documents required by the Contract Documents, including, without limitation, as-built drawings, attic stock, maintenance manual, operating instructions and other documents required to be delivered under the Contract in connection with the Work in the form required by the Owner, (2) 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, (3) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (4) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (5) consent of surety, if any, to final payment, (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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, and (7) all warranties and guarantees required by the Contract Documents. 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. If such lien 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 such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.2.1** In addition to the submittals required in Section 9.10.2 above, the Contractor shall submit separate final release or waivers of lien for each Subcontractor, material supplier, or others with lien rights against the Project, 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

*(Paragraphs deleted)*

by the Owner shall not constitute a waiver of claims, causes of action, damages or complaints by the Owner.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing in accordance with Article 15 and identified by that payee in writing as unsettled at the time of the final Application for Payment.

**§ 9.10.6** At any time a lien is filed against the Project funds, the Owner may demand that the Contractor discharge said lien, through bonding or otherwise, and the Contractor must obtain the discharge of said lien within seven (7) days of such demand at the Contractor's sole cost and expense, and at no cost to the Owner. If any lien or other encumbrance required to be removed at the Contractor's sole cost and expense pursuant to this Section is not discharged of record as aforesaid, the Owner shall have the right to take such action as the Owner shall deem appropriate (which shall include the right to cause such lien or other encumbrance to be canceled and discharged of record), and in such event, all costs and expenses incurred by the Owner in connection therewith (including, without limitation, premiums for any bond furnished in connection therewith, and reasonable attorneys' fees, court costs and disbursements), shall be paid by the Contractor to the Owner on demand or, at the option of the Owner, deducted from any payment then due or thereafter becoming due from the Owner to the Contractor in accordance with the provisions of these General Conditions.

**§ 9.10.7** Existing warranties shall not deprive the Owner of any cause of action, right, or remedy otherwise available for breach of any of the provisions of the Contract Documents. The periods referred to above shall not be construed as limitations on the time in which the Owner may pursue any such action, right or remedy.

**§ 9.10.8** The Contractor shall achieve final completion of all Work, including, without limitation, correction of punch-list items, preparation and delivery of all manuals, presentation of training and completion of final paper submissions not later than 30 days following the date of Substantial Completion. In the event the Contractor shall fail to achieve final completion of the Work within such a period of time, the Contractor and the Contractor's surety, if any, shall be liable for and shall reimburse the Owner for any and all fees paid to the Architect and Construction Manager and other expenses made necessary by the Contractor's failure. Additional fees and expenses shall be charged by the Owner against any Final Payment due or which may become due to the Contractor, and the Contractor shall promptly pay or refund the Owner the excess, if any, upon the Owner's written request.

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

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

The Contractor shall be responsible for initiating, implementing, directing, controlling, 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. The Contractor's safety precautions and programs shall include specific steps designed to minimize the risk of contracting or spread of COVID-19, including provision of all appropriate personal protective equipment, social distancing, avoiding stacking of trades, and other reasonable precautions.

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

**§ 10.2.1** The Contractor shall take necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury, infection or exposure to COVID-19, 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 the Owner's real and personal property and 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;
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors; and
- .5 the existing buildings and premises in the vicinity of or affected by the Contractor's operations.
- .6 the contractor agrees, in order that the work will be completed with the greatest degree of safety, to conform to the requirements of the NYS SED rescue regulations (excerpt of the constructors responsibilities section 155.5) and the Occupational Safety and Health Act of 1970 (OSHA) as amended and the Construction Safety Act of 1969 as amended, including all standard and regulations that have been since or shall be promulgated by the governmental authorities which administer such acts, and shall indemnify and hold harmless the owner, Construction Manager, the Architect, and all.

**§ 10.2.1.6** Safe access to and egress from any building under construction as part of this Contract, or any existing building in which Work is being done under this Contract, shall be maintained and remain unencumbered by the Contractor in accordance with all applicable codes, rules and regulations of authorities having jurisdiction on the Work. The Contractor and its Subcontractors shall cooperate in maintaining this condition. Roadways, paths, walks, exits, service drives and other areas shall remain unobstructed and shall be maintained in a safe and satisfactory condition, for all persons using the building and premises. Materials shall not be stored promiscuously about the site or in the building, but shall be carefully stored in areas which will not interfere with pedestrian traffic or with access to and egress from adjacent properties and use of the building. The Contractor shall provide and maintain such temporary Work as may be required for the protection of its finished Work where liable to injury. The Contractor will be responsible for all of its Work, materials and equipment that may be damaged or stolen during the duration of the Contract and until the Work is accepted by the Owner. The Contractor shall make good any such damage or loss without expense to the Owner. The Contractor shall not permit unnecessary hazards to be created nor permit them to continue if they are discovered. The Contractor's storage and staging areas shall be only in locations assigned or approved by the Owner and Architect and may be required to be relocated by the Contractor as building occupancy or use changes during the course of the Work. This relocation will be done by the Contractor at no additional cost to the Owner.

**§ 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 the Labor Law of the State of New York, and regulations adopted thereunder, place upon both the Owner and the Contractor certain duties and that liability for failure to comply therewith is imposed on both the Owner and the Contractor regardless of their respective fault. The Contractor hereby agrees that, as between the Owner and the Contractor, the Contractor is solely responsible for compliance with all such laws and regulations imposed for the protection of persons performing the Contract. The Contractor shall indemnify and hold harmless the Owner of and from any and all liability for violation of such laws and regulations and shall defend any claims or actions which may be brought against the Owner as the result thereof. In the event that the Contractor shall fail or refuse to defend any such action, the Contractor shall be liable to the Owner for all costs of the Owner in defending such claim or action and all costs of the Owner, including attorney's fee, in recovering such defense costs from the Contractor.

**§ 10.2.2.2** All laborers, workers, and mechanics employed in the performance of the Work of this Project shall be certified as having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least 10 hours in duration. The Contractor and its Subcontractors shall conduct their operation in accordance with the Safety Guides for Construction as issued by State Education Department, and the Contractor's safety program.

**§ 10.2.2.3** All safety equipment including hard hats, weather protective gear and PPE required for the Contractor to perform its Work are to be supplied by the Contractor or its Subcontractors. Within the designated construction areas, the Contractor's employees, superintendents, or other agents, and its Subcontractors, employees, superintendents, or other agents are required to wear hard hats and other required or essential safety equipment. Each person seen without a hard hat, or otherwise failing to comply with this requirement, will be ordered to leave the Project. No prior warnings will be given by the Owner, Construction Manager or Architect. The Contractor and its Subcontractors shall be solely responsible for making up and paying for any loss of production or required progress resulting from the removal of personnel from the Project as set forth herein including any costs incurred by the Owner in connection with the work of other contractors.

**§ 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 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, except damage or loss 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, and shall not be limited by such damage or loss being insured under property insurance required by the Contract Documents.

**§ 10.2.6** The Contractor shall schedule weekly safety meetings and each of its Subcontractors must be properly represented at such meetings. 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 load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. The Contractor shall not load any part of the Work with materials, equipment, shores,

bracing, or other items which in any way could cause damage to the Work or to other Work or could endanger persons in or about the Work.

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

**§ 10.2.9** The Contractor shall be responsible for all breakage of glass, which has been furnished and installed as part of Contract and existing glass that is broken due to operations under the Contract for Work. No matter by whom or what cause glass was broken, the Contractor shall replace all broken glass before completion and acceptance of the Contractor's Work. The Contractor may claim damages, if applicable.

**§ 10.2.10** In addition to all requirements set forth herein, the Contractor and its Subcontractors shall fully comply with the provisions of the federal Occupational Safety and Health Act of 1970, as amended, and with any rules and regulations pursuant to the Act. This requirement shall apply continuously and not be limited to normal working hours.

**§ 10.2.11** The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor at its sole expense.

**§ 10.2.12** The Contractor shall immediately contact the Construction Manager and, within 24 hours, report, in writing, to the Owner, Architect and Construction Manager, all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner, Construction Manager, and Architect.

**§ 10.2.13** The Contractor shall be solely responsible for any conditions that 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 at the sole expense of the Contractor.

**§ 10.2.14** The Contractor is responsible for restoration or repair of utilities, private property, buildings, pavement, walkways, roads, etc. damaged by its activities under this Agreement to the satisfaction of the Owner, Construction Manager and Architect.

**§ 10.2.15** From the commencement to the final completion of the Work, the Contractor shall keep the Work and the Owner's building(s) free from accumulation of water no matter the source or cause of water infiltration.

**§ 10.2.16** During construction, the Contractor shall be responsible for maintaining a watertight structure. This responsibility shall include additions/alterations of 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(s), the Contractor shall be responsible for all costs associated with clean up, remediation and repairs. Inasmuch as flooding and water damage have safety implications to the general public, clean up, remediation and repairs may be made by the Owner without prior notice 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 this Contract, agrees to be liable for these costs.

**§ 10.2.17 Injury or Damage to Person or Property**

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

### **§ 10.3 Hazardous Materials**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents and all applicable laws, rules and regulations regarding hazardous materials. 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 report the condition to the Owner, Construction Manager and Architect in writing. The Owner shall arrange for the material to be tested and if the test reveals that the material is a hazardous material or substance which has not been rendered harmless, the Owner shall pay for the test; otherwise, the Contractor shall bear the cost of the test and the Contract Sum shall be reduced by the amount of that cost. The Contractor shall comply with the reasonable instructions of the Owner after the test is conducted. This Section shall not apply in the case of asbestos which is to be removed and disposed of as part of the Work of the Contract.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a 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. 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 in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** To the fullest extent permitted by law, but only to the extent of available insurance proceeds, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, 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 the person seeking indemnification: (1) did not bring such material onto the Project site; (2) timely provided notice of the condition and stopped Work in the affected area as required by Section 10.3.1; and (3) has a claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). The Owner shall have no indemnity obligation to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity or the fault or negligence of a third party for whom the Owner is not responsible.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for 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 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 indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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 or fault 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 (that was not brought to the site by the Contractor or those for whom the Contractor is responsible) solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

**§ 10.3.7** The Contractor shall notify the Owner of any storage, use, or discovery of hazardous material on the Project site which the Contractor knows or reasonably should know could cause bodily injury or death and of any injury or death attributable to any such hazardous material.

**§ 10.3.8** The Contractor shall take all reasonable precautions and measures to prevent any contamination by or spread or disturbance of hazardous or potentially hazardous substances or materials stored, used, or discovered on the Project site.

§ 10.3.9 For the avoidance of any doubt, COVID-19 shall not be considered a Hazardous Material for purposes of this Article 10.3.

#### § 10.4 Emergencies

§ 10.4.1 The Contractor shall provide at the site, such equipment and medical facilities as are necessary to supply first-aid service to anyone at the Work.

§ 10.4.2 The Contractor must promptly report in writing to the Construction Manager all emergencies whatsoever arising out of, or in connection with the performance of the Work, whether on, or adjacent to the site, which caused death, personal injury or property damages, giving full details and statements of witnesses. In addition, if death, injury, or damages are caused, the emergency shall be reported immediately to the Construction Manager, Owner, and Architect.

§ 10.4.3 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.

§ 10.4.4 All fire and emergency access, including roads, rights-of-way, corridors, doors, and stairs, and all existing fire and smoke detection systems shall be maintained at all times in accordance with fire safety laws. If the Work requires the temporary obstruction of any fire and emergency access or existing fire and smoke detection systems, the Construction Manager shall be notified at least 72 hours in advance.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor agrees to secure and maintain, at Contractor's own expense, all insurance coverage required in this Article 11 from one or more insurance companies licensed and admitted to write such insurance in New York State. Insurers must carry an A.M. Best Financial Strength rating of A- or higher. The Contractor's insurance must include the following, without limitation, and must be written with limits no less than specified in Section 11.1.2:

- .1 claims under workers' compensation, disability benefit, and other similar employee benefit acts applicable to the Work to be performed, including, without limitation, claims by the employees of private entities performing Work at the site that are exempt from workers' compensation insurance coverage requirements on account of number of employees or occupation, which entities must maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness, disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including resulting loss of use resulting;
- .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 involving contractual liability applicable to the Contractor's obligations under Section 3.18.
- .8 A fully completed New York Construction Certificate of Liability Insurance Addendum (Acord 855 2014/15) must be included with the certificates of insurance. For any "yes" answers on Items G through L on this Form – additional details must be provided in writing. No exclusions, restrictions and/or modifications to coverages will be accepted.
- .9 **Where the Contract or Subcontract involves asbestos, the insurance required by section 11.1 shall specifically include the words asbestos abatement work and shall specify any limitations on completed operation time. If there is a limitation it will be at the owner's discretion to accept or reject that limitation.**
- .10 Insurance must remain in effect at least until final payment and all items thereafter when the contractor may be correcting, removing or replacing defective work in accordance with this document, and
- .11 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:
  - .1 Premises operations without exclusion of x,c, and u coverage;



- .2 Independent Contractors Protective;
- .3 Products and completed operation;
- .4 Personal Injury Liability;
- .5 Owned, non-owned and owned motor vehicles
- .7 Broad form property damage including completed operations

**§ 11.1.2** Coverages, whether written on an occurrence or claims-made basis, must 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. Claims-made coverage will only be allowed when the Contractor demonstrates that occurrence-based coverage is not available for a specific type of required coverage. The insurance required by Section 11.1.1 must be written for not less than the following limits, or greater limits as may be required by law, and include the following terms:

- .1 Commercial General Liability.** Occurrence-based Commercial General Liability coverage to include bodily injury, personal injury, and property damage applicable to ongoing operations, products & completed operations, and contractual liability, all with a per-project aggregate endorsement. No XCU exclusion is allowed for explosion, collapse, and underground operations. Products and Completed Operations coverage must be maintained in force for a minimum of two (2) years following Final Completion of the Project. Minimum limits are:
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products and Completed Operations Aggregate
  - \$1,000,000 Personal and Advertising Injury
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$ 100,000 Fire Damage (any one fire)
  - \$ 10,000 Medical Expense (any one person)
- .2 Automobile Liability.** Bodily Injury and Property Damage coverage for the Contractor as the owner or lessee of automobiles, trucks, trailers, self-propelled Contractor's equipment, and all other owned and non-owned vehicles registered for use on the public highway and/or used in operations relating to the Contractor's Work, with a minimum Combined Single Limit of \$1,000,000. If any such vehicles are to be used to transport hazardous materials, the Contractor shall also provide pollution liability broadened coverage evidenced by ISO Form CA 99 48 and MCS-90.
- .3 Excess Liability and/or Umbrella Liability.** Minimum limits are:
  - \$5,000,000 each Occurrence and \$5,000,000 for general construction and no work at elevation (1 story – 10 feet) or Project values less than or equal to \$1,000,000.
  - \$10,000,000 each Occurrence and \$10,000,000 Aggregate for high risk construction, work at elevation (>1 story or 10 feet) or Project values greater than \$1,000,000.
 Umbrella/Excess coverage shall be on a follow-form basis.
- .4 Workers' Compensation**
  - .1 Workers' Compensation Requirements.** To comply with the New York State Workers' Compensation Law, the Contractor must (1) be legally exempt from obtaining workers' compensation insurance coverage, or (2) obtain such coverage from insurance carriers, or (3) be self-insured or participate in an authorized group self-insurance plan. Minimum limitations are:
    - Bodily Injury by Accident: \$500,000 Each Accident
    - Bodily Injury by Disease: \$500,000 Each Employee
    - Bodily Injury by Disease: \$500,000 Policy Limit
  - .2 Workers' Compensation Coverage Evidence.** To demonstrate compliance with the New York State Workers' Compensation Law, the Contractor must provide **one** of the following forms to the Owner:
    - .1 Either** CE-200, "Affidavit For New York Entities And Any Out Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required"; **or** CE-200, "Affidavit That An Out-Of-State Or Foreign Employer Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage" (either affidavit must be stamped as received by the New York State Workers' Compensation Board); **or**
    - .2 Either** C-105-2, "Certificate of NYS Workers' Compensation Insurance Coverage" (for employers insured for workers' compensation through a private insurance carrier – the Contractor's insurance



carrier must send this form to the Owner), **or** U-26.3, "New York State Insurance Fund Certificate of Workers' Compensation Coverage" (for employers insured for workers' compensation through the State Insurance Fund); **or**

- .3 Either** SI-12, "Certificate of Workers' Compensation Self-Insurance," **or** GSI-105-2, "Certificate of Participation in Workers' Compensation Group Self-Insurance (for employers participating in group self-insurance for workers' compensation – the Contractor's Group Self-Insurance Administrator must send this form to the Owner).

**.5 Employer's Liability/Disability**

**.1 Disability Benefits Requirements.** To comply with the New York State Disability Benefits Law, the Contractor must (1) be legally exempt from obtaining disability benefits insurance coverage, (2) obtain such coverage from insurance carriers, or (3) be self-insured.

**.2 Disability Benefits Coverage Evidence.** To demonstrate compliance with the New York State Disability Benefits Law, the Contractor must provide **one** of the following forms to the Owner:

**.1 Either** CE-200, "Affidavit For New York Entities And Any Out Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required" **or** CE-200, "Affidavit That An Out-Of-State Or Foreign Employer Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage" (either affidavit must be stamped as received by the New York State Workers' Compensation Board); **or**

**.2 Either** DB-120.1, "Certificate of Disability Benefits," **or** DB-820/829, "Certificate/Cancellation of Insurance" (the Contractor's insurance carrier must send either form to the Owner); **or**

**.3** DB-155 (3/04), "Certificate of Disability Benefits Self-Insurance."

**.6 Hazardous Materials.** If the Contractor's Work involves handling or disturbance of asbestos or other hazardous materials, the Contractor shall provide bodily injury and property damage liability insurance applicable to such operations, covering both ongoing operations and products & completed operations. Products and Completed Operations coverage must be maintained in force for a minimum of two (2) years following Final Completion of the Project. Coverage must be for limits not less than:

**.1** If covered by the Contractor's umbrella/excess liability policy:

\$2,000,000 General Aggregate  
\$2,000,000 Each Occurrence or Incident:

**.2** If not covered by the Contractor's umbrella/excess liability policy:

\$6,000,000 General Aggregate  
\$6,000,000 Each Occurrence or Incident:

**.7 Owner's Protective Liability Policy.** The XCU exclusion must be deleted, and the Named Insureds will be "Nanuet Union Free School District." Minimum limits are:

\$2,000,000 Each Occurrence  
\$4,000,000 Aggregate

OCP coverage must be written with licensed and admitted carriers, list the district as the name insured. No additional insureds will be on the OCP.

**§ 11.1.3** Certificates of insurance acceptable to the Owner, together with copies of all insurance policies procured by the Contractor pursuant to this Article 11, including, without limitation, terms, conditions, declarations, riders, and endorsements, must be submitted to the Construction Manager for transmittal to the Owner, with copies to the Architect, prior to commencement of the Work. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage must be submitted with the final Application for Payment as required by Section 9.10.2.2. Information concerning reduction of coverage must be furnished by the Contractor with reasonable promptness. In addition to the Certificates of Insurance and accompanying documents, the Contractor shall provide to the Certificate Holders, on a timely basis, copies of any subsequently issued endorsements that amend any coverages or limits. In addition:

**.1** "Certificate Holders" are the Nanuet Union Free School District, 101 Church Street, Nanuet, NY, 10954

**.2** Coverages reflected in certificates of insurance and underlying policies must comply with all requirements of this Article 11.

**.3** All insurance documents must be executed with *authorized* signatures.

**.4** All required liability policies must be endorsed to provide that any Notice of Cancellation or Notice of Non-Renewal given to the First Named Insured must also be given to the Additional Insureds identified in Section 11.1.4. **Copies of such endorsements must be furnished to the Certificate Holders.**

**.5** Failure of the Owner to object to the Contractor's failure to furnish a certificate or other evidence of required insurance coverages, or to object to any defect in such certificate or other evidence, or to demand receipt of

such certificate or other evidence, is not a waiver of the Contractor's obligation to furnish the required insurance coverages. Furthermore, nothing contained in this Article 11 imposes on the Owner a duty or obligation to review any certificates or other evidence of insurance coverages or to issue any formal approval or acceptance of such evidence, the duty and obligation of the Contractor being to provide insurance meeting the requirements of this Article 11 regardless of any review or lack of review by the Owner of the Contractor's evidence of insurance.

- .6 The Contractor's liability to and indemnification of the Owner is not relieved or diminished by the Contractor securing insurance coverage in accordance with this Article 11. Any acknowledgement of receipt of, or lack of objection by the Owner to, the Contractor's evidence of required insurance coverage is not acceptance in any way of any deficiencies in the Contractor's insurance coverage.

#### § 11.1.4 Additional Insureds

§ 11.1.4.1 Policies of insurance required under Sections 11.1.2.1 (Commercial General Liability), 11.1.2.2 (Automobile Liability), 11.1.2.3 (Excess Liability and/or Umbrella Liability), and 11.1.2.6 (Hazardous Materials – if applicable) must also apply to the following as Additional Insureds on a primary and non-contributory basis, with the following designation, unaltered:

Nanuet Union Free School District and their respective employees, interim administrators, authorized volunteers, committee members, student teachers, auxiliary instructors, members of the Board of Education, and consultants (the "District Indemnitees"); KSQ Architects, PC and its consultants ("Designers"), and Jacobs ("Construction Manager"), during both ongoing and complete operations. The additional insured coverage provided shall not preclude coverage in favor of the any District Indemnitees, Designers, or Construction Manager, based on its lack of privity with Contractor or other third party additional insured. Further, such coverage shall not exclude or deny coverage to District Indemnitees, Designers, or the Construction Manager on the basis that the named insured Contractor's Work or operations are not performed directly for the District Indemnitees, Designers, or Construction Manager or other third party additional insured.

§ 11.1.4.2 **Coverage Evidence.** Additional Insured coverage must be effected through the use of **either** ISO Form CG **CG 20 38** and CG 20 37 04 13 **together**. **Form CG 20 38** alone is not acceptable. Certificates of Insurance must clearly state how coverage is effected in the Excess/Umbrella Liability layer. Certificates of Insurance must show the form numbers used to effect all of the Additional Insured coverages. A copy of the actual policy language or endorsement that effects this coverage in each policy must be provided to the Owner and Construction Manager with the Certificate of Insurance. In the event Contractor is unable to procure such coverage specifically naming the "District Indemnitees," "Designers," "Construction Manager," or any other third party as an additional insured as required above, Contractor shall notify the Owner and Construction Manager prior to commencing Work and shall not proceed with any Work until authorized by the Owner to do so.

§ 11.1.4.3 **No Reliance on "Following Form."** The Contractor acknowledges that "Following Form" wording generally does not meet the primary and non-contributory coverage requirement for Additional Insureds, and that the coverage primacy aspect of Additional Insured coverage is typically addressed in the "Other Insurance" provisions of a policy's "Conditions" section, and often requires an amending endorsement to effect coverage on a primary and non-contributory basis. The Contractor therefore must provide such endorsements to the Owner, or other documentation acceptable to the Owner evidencing that the primary and non-contributory coverage requirements are met as to all policies for which they are required under Section 11.4.1.1.

§ 11.1.5 **Normal Expiration/Renewal.** When any required insurance is to expire due to a normal expiration or renewal date, the Contractor shall supply the Owner, at least ten (10) days prior to either such date, in addition to Certificates of Insurance, with either (1) copies of all renewed insurance policies, including, without limitation, terms, conditions, declarations, riders, and endorsements evidencing continuation of all coverages in the same manner, limits of protection, and scopes of coverage as was provided by the previous policy, or (2) if acceptable to the Owner, all declaration pages, mandatory riders, and/or endorsements that clearly evidence the continuation of all coverages in the same manner, limits of protection, and scope of coverage as provided by the previous policy.

§ 11.1.6 **Subcontractors.** The Contractor shall cause each Subcontractor to (1) procure insurance during the life of its Subcontract or Sub-subcontract the same insurances as are required of the Contractor as per this Article 11, and (2) cause the issuers of those insurance policies to name the Additional Insureds as Additional Insureds under each

Subcontractor's comprehensive general, automobile, excess/umbrella, and hazardous materials liability policies. The Additional Insured endorsement included in each such Subcontractor's policies must state that coverage is afforded to all Additional Insureds with respect to any and all claims arising out of operations performed by or on behalf of the Contractor. If the Additional Insureds have other insurance otherwise applicable to a loss, such other insurance will only apply, if at all, on an excess or contingent basis. The amount of each Subcontractor's insurers' liability under each such insurance policy will not be reduced by the existence of such other insurance.

**§ 11.1.7 Owner Insurer Loss Payments.** In the event the Owner's insurer(s) make(s) any payment toward any loss covered under any policy of insurance the Contractor is required to procure under this Article 11, the Owner's insurer(s) are subrogated to all of the Contractor's rights of recovery against any person or organization including, but not limited to, the Contractor's insurer(s), and the Contractor shall execute and deliver all instruments, papers, and whatever else is necessary to secure those rights. The Contractor shall do nothing after the payment of any damages to prejudice those rights.

### **§ 11.2 Owner's Liability Insurance**

The Owner shall purchase and maintain the Owner's usual liability insurance. The Owner may also, at its sole option, purchase and maintain other insurance for protection against claims that may arise from operations under the Contract Documents. The Contractor is not responsible for purchasing and maintaining such optional Owner's liability insurance unless specifically required in the Contract Documents. Neither the Owner's usual liability insurance nor any other insurance obtained by the Owner reduces or otherwise affects the Contractor's insurance requirements under Section 11.1.

*(Paragraphs deleted)*

### **§ 11.3 Property Insurance**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of New York, property insurance on a replacement cost basis. Such property insurance will 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 is 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 will include interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance will be on a builder's risk, "all-risk," or equivalent policy form and 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 will cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss. Coverage for other perils is not required unless otherwise provided in the Contract Documents. The form of policy for this coverage shall be Completed Value.

**§ 11.3.1.1.1** Contractor is responsible for all tools, equipment, materials, Work, etc., until Substantial Completion and possession by Owner. The 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 of New York.

**§ 11.3.1.2** 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 as full replacement cost basis without voluntary deductible. The Contractor shall provide Certificate copies to the Construction Manager showing the coverage for their materials in transit or stored off site.

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

**§ 11.3.1.4** The property insurance will cover portions of the Work stored off the site, and also portions of the Work in transit. The insurance required by this Section 11.3 will not, however, cover machinery, tools, equipment, vehicles, shanties, tool houses, trailers, or other temporary or permanent structures owned or rented by the Contractor, a

Subcontractor, or a Sub-subcontractor, or their employees, utilized in performance of the Work but not incorporated into the permanent improvements. The Contractor is solely responsible for all such items of its own and any under its control. The Contractor shall, at the Contractor's own expense, provide insurance coverage for all of the items described in this Section 11.3.1.4, which is subject to the provisions of Section 11.3.7.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 may not commence until the insurance company or companies providing property insurance consent 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 Owner shall not be responsible to or for the Contractor or Subcontractor against any loss by fire, lightning, extended coverage, all risk, theft or vandalism and malicious mischief, or 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.

§ 11.3.1.7 The form of policy for the coverage required by 11.3.1 shall be Completed Value.

§ 11.3.2 **Boiler and Machinery Insurance.** The Owner, if applicable to the Work and at its sole option, may purchase and maintain boiler and machinery insurance or shall do so if required by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance will include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work.

§ 11.3.3 **Intentionally omitted.**

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described in this Section 11.3 or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost for it will be charged to the Contractor by appropriate Change Order.

§ 11.3.5 **Intentionally omitted.**

§ 11.3.6 Upon the Contractor's request, the Owner will provide copies 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 (1) each other and any of their respective subcontractors, sub-subcontractors, agents and employees, and (2) the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their respective subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other causes of loss to the extent of proceeds under property insurance obtained pursuant to this Section 11.3 or other property 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. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and any of their respective subcontractors, sub-subcontractors, agents, and employees, by appropriate written agreements, similar waivers each in favor of other parties enumerated in this Section 11.3.7. The policies must provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation is 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 has an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance will be adjusted by the Owner and made payable to the Owner 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 written agreements shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner shall, upon occurrence of an insured loss, give a bond for proper performance of the Owner's duties. The cost of the bond will be charged against proceeds received. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement. If after such loss no other special agreement is made, and unless the Owner terminates the Contract for convenience, replacement of damaged property will be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner will adjust and settle a loss with insurers unless one of the parties in interest objects in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute will be resolved in the manner selected as the method of binding dispute resolution in the Agreement. Nothing in this Agreement calls for the name of any party other than the Owner as loss payee on the Owner's insurance and no draft or other instrument in payment of any loss will name any other party as a joint payee.

§ 11.3.11 The Contractor's Insurance Company shall acknowledge in writing to the Construction Manager that they have read and will comply with all requirements under Indemnification Section 3.18 of the General Conditions.

#### § 11.4

*(Paragraphs deleted)*

#### **Performance Bond and Payment Bond**

*(Paragraphs deleted)*

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising under it. Bonds must be obtained from a surety company or companies satisfactory to the Owner, licensed to do business in the State of New York, and listed in the latest issue of U.S. Treasury Circular 570. The amount of each bond will be equal to one hundred (100) percent of the Contract Sum. Each bond must be maintained throughout the duration of the Project, and subsequently to the extent the Contractor has ongoing performance and payment obligations following completion of the Project.

§ 11.4.1.1 No Performance or Payment Bond shall require, as a condition precedent to termination of a Contract or Contractor, that any notice be sent to or meeting be arranged or held with a Contractor (Principal) and/or surety, prior to such termination. Any such requirement(s) shall be void and unenforceable and the Owner shall have the right to reject any such bond(s) and/or ignore such condition. The exclusive method of termination of a Contract or Contractor is contained in the Contract Documents and a Contractor and surety expressly agreed to be bound thereby.

§ 11.4.1.2 Rider including the following provisions shall be attached to each Performance Bond: "Surety 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 relieve the surety of its obligations hereunder and notice to the surety of such matters is hereby waived"

§ 11.4.2 Bonds must be prepared on the forms of AIA Documents A312-2010 - Performance Bond and A312-2010 - Payment Bond, without modifications other than (1) a mandatory statement in Section 16 of the Performance Bond that it is given as a statutory or other legally required bond and that Section 13 of the Performance Bond applies in full, without exception, (2) a mandatory statement in Section 16 of the Performance Bond that it includes performance by the Contractor of any correction and warranty obligations in the Contract Documents, including such performance after the dates of Substantial and Final Completion, and (3) a mandatory statement in Section 18 of the Payment Bond that it is given as a statutory or other legally required bond and that Section 14 of the Payment Bond applies in full, without exception. The cost of the bonds is included in and will not increase the Contract Sum.

- .1 The Contractor shall deliver the required bonds to the Owner not later than 7 days following the date the Agreement is entered into and before commencing any of the Work.
- .2 The Contractor shall require any attorney-in-fact who executes the required bonds on behalf of the surety to affix to the bonds a certified and current copy of their power of attorney authorizing him or her to sign the bond.
- .3 The bonds must specifically name the Nanuet Union Free School District as Obligee.



§ 11.4.3 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.

## **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 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 Owner, through its Architect or Construction Manager, shall have the authority to reject Work performed by the Contractor that does not conform to the requirements of the Drawings, Specifications, or both. The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

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

§ 12.2.2.1 If, within two years after the date of Substantial Completion of the Work or a designated portion of the Work, or the date of acceptance of a portion of the Work that is subject to correction or completion after the date of Substantial Completion of the Work, whichever is later, 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 obligation set forth hereunder shall survive acceptance by the Owner of the Work or termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

§ 12.2.2.2 The two-year period for correction of the 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 Upon completion of any Work under or pursuant to this Section 12.2, the two-year period for correction of Work in connection with the Work requiring correction shall be renewed and recommence.

§ 12.2.2.4 The obligations shall cover any repair and replacement to any part of the Work or other property caused by the defective Work.

§ 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.

§ 12.2.3.1 If the Contractor fails to commence to correct, repair and make good any defects in its Work within a reasonable time, not to exceed ten (10) days from the date the Contractor received written notice from the Owner per Section 12.2.2.1, the Owner may correct it in accordance with Section 2.5 and the Contractor shall, upon demand, pay to the Owner all amounts which it expends for such corrective work.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Multiple Prime Contractors or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. The Contractor shall also replace or repair to satisfaction of Owner any and all damage done to the building or its contents in consequence of work performed in fulfilling any applicable warranty. This clause is general in nature and will not operate to waive stipulations of other clauses that specify warranty periods in excess of two (2) years.

§ 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 two-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 determined by the Owner, with the advice of the Construction Manager and Architect. Such adjustment shall be effected whether or not final payment has been made. For this Section to apply, the Owner must accept non-conforming Work in writing specifying the non-conforming Work being accepted. Notwithstanding any acceptance by the Owner, if the Owner discovers non-conforming Work that the Owner has not expressly accepted in writing, the Owner may demand that the Contractor correct such Work as per the provisions of Article 12 hereof.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the State of New York, and the parties expressly agree that any claim, dispute, or other controversy of any nature arising out of the Contract or performance of the Work shall be commenced and maintained in New York State Supreme Court, **Rockland** County.

§ 13.1.2 The Contractor shall at all times observe and comply with all federal, state and local laws and all laws, ordinances and regulations of the Owner, in any manner affecting the Work and all such orders decreed as exist at present and those which may be enacted later, by bodies or tribunals having jurisdiction or authority over the Work, and the Contractor shall defend, indemnify and save harmless the Owner and its Board of Education, officers, agents, or servants against any claim or liability arising from, or based on, a violation of any such law, ordinances, regulation, order or decree, whether by himself or by his employee or agents. Historical lack of enforcement of any law, local or otherwise, shall not constitute a waiver of Contractor's responsibility for compliance with such law in a manner consistent with the Agreement unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the agency responsible for the enforcement of such law.

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

§ 13.3.2 Neither the acceptance of all or any part of the work covered by the Contract; nor any payment therefore; nor any order or application for payment issued under the Contract or otherwise issued by the Owner, Architect,

Construction Manager, or any board member, officer, agent or employee of the Owner; nor any permission or direction to continue with the performance of the Contract before or after its specified completion date; nor any performance by the Owner of any of the Contractor's duties or obligations; nor any aid lent to the Contractor by the Owner in its performance of such duties or obligations; nor any delay or omission by the Owner to exercise any right or remedy accruing to it under the terms of the Contract or existing at law or in equity or by statute or otherwise; nor any other thing done or omitted to be done by the Owner, its commissioners, officers, agents or employees; shall be deemed to be a release to the Contractor or its sureties from any obligations, liabilities or undertakings in connection with the Contract or the performance bond or a waiver of any provision of the Contract or of any rights or remedies to which the Owner may be entitled because of any breach thereof, excepting only a written instrument expressly providing for such release or waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the Contract, because of any breach hereof, shall be deemed a waiver of any money damages to which the Owner may be entitled because of such breach. No waiver by the Owner of any breach of the Contract shall be deemed to be a waiver of any other or any subsequent breach.

**§ 13.3.3** The rights stated in these General Conditions and the Contract Documents are cumulative and not in limitation of any rights of the Owner at law or in equity.

**§ 13.3.4** The Owner shall not be responsible for damages or for loss of anticipated profits on Work not performed on account of any termination of the Contractor by the Owner or by virtue of the Owner's exercise of its right to take over the Contractor's Work.

**§ 13.3.5** The Owner shall not be liable to the Contractor for punitive damages on account of its termination of the Contractor or any other alleged breach of the Agreement and the Contractor hereby expressly waives its right to claim such damages against the Owner.

**§ 13.3.6** The Contractor hereby expressly waives any rights it may have in law or in equity to lost bonding capacity as a result of any of the actions of the Owner, the Architect or the Construction Manager taken in connection with the Contractor's Work on the Project.

**§ 13.3.7** The Contractor agrees that it waives the defense of privity of contract as between itself and each other Prime Contractor. In the event that an act or omission by a Prime Contractor or its Subcontractors of any tier causes impact, damage or loss in any form to the Contractor, then the Prime Contractor responsible in whole or in part for such impact, damage or loss agrees it is directly responsible and liable to the Contractor. The Contractor acknowledges and agrees that this waiver of the defense or privity of contract permits and requires it to commence an action or suit directly against the responsible Prime Contractor. The Owner, Architect and the Construction Manager shall not be parties to such suit. The Contractor waives and relinquishes any right and claim as against the Owner, to the extent such claim is caused, or contributed to, by a Prime Contractor or its Subcontractors of any tier.

#### **§ 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. Tests, inspections and approvals of portions of the Contractor's Work required by the Drawings or Specifications shall be made at an appropriate time. Unless otherwise provided, the Contractor shall arrange 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**§ 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 or Architect shall, upon written authorization from the Owner, instruct the Contractor to arrange 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 such 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, including the cost of retesting for verification of compliance if necessary until the Architect certifies that the Work in question does comply with the requirements of the Contract Documents, and none of such costs shall be included in computing the Contract Sum.

**§ 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** Any material to be furnished shall be subject to inspections and tests in the shop and field by the Architect. Shop inspection shall not relieve the Contractor of the responsibility to furnish satisfactory materials and the right is reserved to reject any material at any time before final acceptance of the Work, when in the opinion of the Architect the materials and/or workmanship do not conform to the Specification requirements.

### **§ 13.5 Interest**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the legal rate as required in General Municipal Law Section 106-b.

### **§ 13.6 Time Limits on Claims**

**§ 13.6.1** No action or proceeding shall lie or be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any claim arising out of or based on the Agreement or the Contract Documents or by reason of any act or omission or requirements relating to the giving of notices and information, unless such action or proceeding shall be commenced within one (1) year after submission to the Owner of the final Application for Payment. As to a claim based upon money required to be retained for any period after the date of the final Application for Payment, such action must be commenced within six (6) months after such money becomes due and payable under the terms of the Contract. Notwithstanding, if the Contract is terminated by the Owner, such action by the Contractor must be commenced within six (6) months after the date of such termination. The Contractor's acceptance of final payment shall constitute a release of all claims against the Owner. This provision shall not relieve the Contractor of the obligation to comply with the provisions of the law relating to notices of claim.

**§ 13.6.2** Acts or failures to act occurring during the construction of the Project or following the issuance of the final certificate for payment, which give rise to a cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor, whichever occurs last.

### **§ 13.7 No Oral Waiver or Constructive Changes**

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by the Owner. No person is authorized on behalf of the Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by the Owner, and shall not relieve the Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

### **§ 13.8 Notices Regarding Liens**

The Contractor shall provide to the Owner copies of all notices of any type regarding liens received from Subcontractors, Sub-subcontractors, or suppliers to the Contractor.

### **§ 13.9 Wages Rates**

The Contractor shall, and cause its Subcontractors to, comply with prevailing wage rate determinations as issued by the State of New York Department of Labor for the location and duration of this Project. Current wage rates for this Project are included in the Project Manual.

### **§ 13.10 General Provisions**

Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

### **§ 13.11 Written Notice**

All notices to be given hereunder shall be in writing and may be given, served, or made by (1) depositing the same in the United States mail addressed to the authorized representative (as specified below) of the party to be notified, postpaid and registered or certified, read receipt requested or (2) depositing the same for overnight delivery (prepaid by and billed to the party giving notice) with a nationally recognized overnight delivery service addressed to the authorized representative of the party being notified or (3) delivering the same in person to the authorized representative of the party being notified or (4) emails to the attention of the authorized representative of the party to be notified with the requirement of a email confirmation notices deposited in the United States mail shall be effective, unless otherwise state in the Contract Documents, from and after the fourth day next following the date deposited in a United States mail receptacle or when actually received, whichever is earlier. Notices transmitted by overnight delivery shall be effective immediately. Email notices shall be effective as of the time received, as shown on a printed email confirmation.

## **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 90 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; or
- .2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .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 and 9.5, or because the Owner has not made payment after 14 days written notice of such failure to make payment provided that such failure is not due to a disputed amount, and except to the extent the Owner is excused from timely making all or part of any payment on a Certificate for Payment as per any other provisions of the Contract Documents.

Notwithstanding the preceding or anything else in the Contract Documents, the Contractor shall not cease or delay the progress of the Work for any reason other than one set forth in Section 9.7.1, it being agreed that monetary damages shall be an adequate remedy for the Contractor for any breach of this Agreement or the Contract Documents by the Owner.

**§ 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.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon 30 days' written notice and opportunity to cure to the Owner, terminate the Contract and recover from the Owner payment for such Work properly performed for which it has not otherwise been compensated, but in no event shall the Owner be liable to the Contractor for any prospective loss, including, but not limited to, termination expenses, loss of anticipated profits, impact damages, unabsorbed overhead, or the like. Notwithstanding the foregoing, any such payments to the Contractor shall be less any setoffs to which the Owner may be entitled as per any other provision of the Contract Documents.

**§ 14.1.4** If the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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 30 additional days' written notice to the Owner, Construction Manager and Architect (during which the Owner shall have the right and opportunity to cure), 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 or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful, and careful manner;
- .2 fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and its Subcontractors or Suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority, or its health and safety plan;
- .4 otherwise is guilty of substantial breach of or default under a provision of the Contract Documents;
- .5 cannot complete the Work within the Contract Time or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Owner's opinion, attributable to conditions within the Contractor's control;
- .6 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .7 is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the Work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders;
- .8 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all requirements of the Contract Documents;
- .9 refuses to proceed with the Work or extra work when and as directed by the Owner, Construction Manager or Architect;
- .10 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than 10 days, except as permitted under the Contract Documents;
- .11 fails or neglects to complete the Work within the Contract Time or in accordance with the Construction Schedule;
- .12 refuses or fails to correct deficient Work performed by it;
- .13 the Contractor's progress of the Work is such that the Owner reasonably believes that the Contractor shall not be able to achieve Substantial Completion by the Substantial Completion Date and the Contractor has not delivered and implemented a recovery plan required under the Contract or has not recovered the schedule sufficient to meet the respective Contract Time requirements as required by written notice to the Contractor by the Owner; or
- .14 disregards the instructions of the Construction Manager, Architect or Owner (when such instructions are based on the requirements of the Contract Documents).

**§ 14.2.2** When any of the above reasons exist, 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 (7) days' written notice, terminate employment of the Contractor at the expiration of such seven (7) day period, 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 utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site,

and also such subcontractors as it may deem advisable, or if may call upon the Contractor's surety at its own expense to do so. 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. Such accounting shall be final, binding and conclusive upon the Contractor, its surety, and any person claiming under or through the Contractor, as to the amount thereof.

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

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

**§ 14.2.4.1** The costs of finishing the Work also include, without limitation, all reasonable attorneys' fees incurred in responding to the default and enforcing the Owner's rights under the Contract Documents (including costs and fees incurred in dispute resolution proceedings), additional title costs, insurance, additional interest because of any delay in completing the Work, loss of State Building Aid, and all other direct and consequential damages incurred by the Owner by reason of the termination of the Contractor as stated herein.

**§14.2.4.2** It is recognized that: (1) if an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract. Failure to comply with such request within ten (10) days of delivery of the request, or Owner's determination that the assurances are not adequate, shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.4 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be back charged against the Contract Sum.

**§ 14.2.5** If the Owner wrongfully terminates the Contract for cause, the rights, remedies and obligations of the parties will be the same as if the Owner had terminated the Contract for convenience under Section 14.4.

**§ 14.2.6** In the event that the Contractor, or the Contractor's surety, challenges the Owner's termination of the Contract for cause, and the Owner prevails in litigation in connection with such challenge, whether initiated by the Owner or by the Contractor or the Contractor's surety, the Owner shall be entitled to its costs, including reasonable attorney's fees, incurred as a result of such litigation, as part of any judgment against the Contractor or the Contractor's surety. Such costs, including reasonable attorney's fees, shall be deemed a cost of finishing the Work.

### **§ 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. The Owner shall incur no liability by reason of such suspension, delay, or interruption except that the Contractor may request an extension of its time to complete its Work in accordance with Article 8 hereof.

**§ 14.3.2** The Contract Time shall be adjusted for increases in time caused by suspension, delay or interruption as described in 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 whole or any portion of the Contract for the Owner's convenience and without cause upon not less than seven (7) days' written notice to the Contractor. Notwithstanding any other provision to the contrary in the Contract, the Owner reserves the right at any time and in its absolute discretion to terminate the services of the Contractor or the Work by giving written notice to the Contractor. This termination for convenience of the Owner provision allows and authorizes the Owner to terminate this Contract at any time and for any reason whatsoever. This right may be exercised by the Owner in its complete discretion. Termination by the Owner under this Section shall be by Notice of Termination delivered to the Contractor specifying the extent of termination and the effective date.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately and in accordance with instructions from the Owner:

- .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;
- .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; and
- .4 proceed to complete the performance of the Work required under portions of the Contract not terminated, if any.

**§ 14.4.3** Upon receipt of written notice of the Owner's exercise of such termination, the Contractor shall, as the Contractor's sole and exclusive remedy, be paid for the Work properly executed in accordance with the Contract Documents prior to the effective date of termination and for items properly fabricated off-site, delivered and stored in accordance with the Owner's instructions or the Contract Documents before such effective date. The Contractor's entitlement to payment for all such work shall be predicated on its performance of such work in accordance with the Contract Documents as certified by the Architect and Construction Manager. The Contractor shall be entitled to no other payment and waives any claim for damages including, but not limited to, lost profits, any prospective loss, underutilization of personnel or equipment, unabsorbed overhead, and any and all items of consequential loss or damage. The Owner shall be entitled to credit against any payment to be made to the Contractor pursuant to this Section 14.4 the following: (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims which the Owner has against the Contractor under the Contract Documents; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor, the cost of which is included in the Contract Sum. Notwithstanding the foregoing, in the event of a termination under Section 14.4.1 prior to the issuance of a Notice to Proceed, the Contractor shall not be entitled to any compensation whatsoever.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

**§ 15.1.1 Definition.** A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, 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. Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a reservation of rights, nor minutes of a meeting, nor a daily report, nor any log entry, nor an Owner's request for or the Contractor's response to a Change Order proposal, nor notice of a potential or future claim shall constitute a Claim.

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

*(Paragraph deleted)*

**§ 15.1.2.1** Claims by the Contractor must be initiated by written notice to the Owner and the Initial Decision Maker. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by the Contractor must be initiated by written notice to the Owner and to the Architect with a copy sent to the Construction Manager within the time limits set forth in Section 15.1.2.1 above. The purpose of the written notice is to give the Owner prompt opportunity: (a) to cancel or revise orders or directions, change plans, mitigate or remedy circumstances giving rise to the Claim or to take other action that may be desirable; (b) to monitor and verify the facts and circumstances as they occur; and (c) to verify any costs and expenses claimed by the Contractor contemporaneously as they are incurred. Written notice is required whether or not the Owner, Construction Manager

or Architect is aware of the facts or circumstances that constitute the basis for the Contractor's Claim, and no action or conduct of the Owner, Construction Manager, Architect or any other person will be regarded as a waiver of such notice requirement except only a written statement to such effect signed by the Owner. Failure of the Contractor to give written notice as required by this Section shall be deemed conclusively to be a waiver and release of any Claim, and such written notice shall be a condition precedent to the Contractor's right to make any Claim arising out of, under or in connection with the Contract or its performance of the Work.

**§ 15.1.3.2** Written notice shall contain a heading stating "Notice of Claim" to clearly identify it as such. Such notice shall set forth in detail the circumstances that form the basis for the Claim and shall include the following: (1) a clear statement of the claim, including background and chronology; (2) documentation in support of the claim; (3) documentation in support of claimed damages; and (4) certification by responsible officer of the Contractor. The responsibility to substantiate Claims shall rest with the Contractor. An additional Claim arising from the same occurrence or condition made after the Initial Claim has been implemented by Change Order shall not be considered.

**§ 15.1.3.3** The Contractor agrees that it has and will make no claim for damages against the Owner by reason of any act or failure to act by any other Contractor, Separate Contractor or Subcontractors having contracts for performance of any portion of work of the Project or in connection with the Owner's, Architect's or Construction Manager's acts or omissions to act in connection with such other Contractors, Separate Contractors or Subcontractors.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim by the Contractor, except as otherwise agreed in writing or as provided in Section 9.7, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents; provided, however, that the Contractor shall use its best efforts to furnish the Architect and Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Architect and the Owner in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. The Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

*(Paragraph deleted)*

**§ 15.1.5 Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3. The Contractor agrees that an express condition precedent to the Contractor's entitlement to any increase in the Contract Sum shall be full and complete compliance to the satisfaction of the Owner with the requirements of Article 15. The Contractor acknowledges the no damages for delay provisions set forth in Sections 8.3.2 and 15.1.6.1.4 hereof.

**§ 15.1.5.1** The Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time if:

- .1 The Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Sum and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or
- .2 The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for the Contractor prior to Contractor's making such final commitment;
- .3 The Contractor failed to give the written notice within the time and as required by Section 15.1.2; or
- .4 If the Owner and the Contractor are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Sum or Contract Times, a claim may be made therefore as provided in Article 15. However, the Owner, Construction Manager, and Architect shall not be liable to the Contractor for any claims, costs, losses or damages sustained by the Contractor on or in connection with any other project or anticipated project.

#### **§ 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 Sections 15.1.2 and 15.1.3 shall be given. The Contractor's Claim shall include an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.6.1.1 An application for extension of time must set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner, Construction Manager or Architect may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim for an increase in the Contract Time.

§ 15.1.6.1.2 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

§ 15.1.6.1.3 The Contractor agrees that an express condition precedent to the Contractor's entitlement to any extension of the Contract Time shall be full and complete compliance to the satisfaction of the Owner with the requirements of Articles 8 and 15.

§ 15.1.6.1.4 The Owner shall not be liable to the Contractor or any of its Subcontractor for claims, impact costs, extended general conditions or delay damages of any nature caused by or arising out of delay, disruption, interference, inefficiencies, impedance, hindrance, acceleration, resequencing, schedule impacts, lack of timeliness by the Owner or its Architect or Construction Manager, and lack of coordination or scheduling, cumulative impact of multiple change orders, errors or omissions in the design of the Project, delay and other performance impacts. The sole remedy against the Owner for such 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. Except to the extent, if any, expressly prohibited by law, the Contractor expressly agrees not to make and hereby waives any claim for damages for delay, including, but not limited to, those resulting from increased labor or material costs, extended general conditions, directions given or not given by the Owner, Construction Manager, or Architect, including scheduling and coordination of the Work; the Architect's preparation of drawings and specifications or the Construction Manager's or Architect's review of shop drawings and requests for instructions; errors or omissions in the design of the Project; or, on account of any delay, disruption, interference, impedance, inefficiency, lack of productivity, obstruction or hindrance for any cause whatsoever by the Owner, Construction Manager, Architect or any other Contractor or Separate Contractor on the Project whether or not foreseeable or anticipated. The Contractor agrees that its sole right and remedy therefore shall be an extension of time, if appropriate. It is emphasized that no monetary recovery may be obtained by the Contractor for delay against the Owner, Construction Manager, Architect, other Contractor or Separate Contractor based on any reason and that the Contractor's sole remedy, if appropriate, is additional time.

§ 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. In planning his construction schedule within the agreed Contract Time, it shall be assumed that the Contractor has anticipated the amount of adverse weather conditions normal to the site of the Work for the season or seasons of the year involved. Only those weather delays attributable to other than normal weather conditions will be considered by the Architect.

§ 15.1.7 **Waiver of Claims for Consequential Damages.** The Contractor waives any and all claims for consequential damages of any kind and nature arising out of or relating to this Contract. This  
(Paragraphs deleted)  
waiver of consequential damages shall survive termination of the Contract.

## § 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 by the Contractor excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to binding dispute resolution of any Claim. If an initial decision has not been rendered within 30 days after the Contractor's Claim has been referred to the Initial Decision Maker, the Contractor may proceed with 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 by the Contractor and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims by the Contractor, 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 by the Contractor or to furnish additional supporting data, such party shall respond, within 10 days after receipt of such 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 by the Contractor in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim by the Contractor, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect and Construction Manager, if the Architect or Construction Manager 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 binding dispute resolution.

§ 15.2.6 Intentionally omitted.

§ 15.2.6.1 Intentionally omitted.

§ 15.2.7 Intentionally omitted.

§ 15.2.8 If a Claim by the Contractor 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.

## ARTICLE 16 SPECIAL CONDITIONS

### § 16.1 Equal Opportunity

§ 16.1.1 The Contractor shall maintain policies for equal employment opportunity for construction employment. During performance of the Agreement, the Contractor agrees as follows:

§ 16.1.2 The Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex **(including trans-gender)**, **sexual orientation**, or national origin. The Contractor shall take affirmative action to ensure that all applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, **(including trans-gender)**, **sexual orientation**, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship and on-the-job training.

§ 16.1.3 The Contractor will post and keep posted in conspicuous places, for employees and applicants for employment, notices obtained by the Contractor from the New York State Division of Human Rights as set forth in the General Regulations of that Division at 9 NYCRR 466.1(a), such conspicuous places to be as defined in 9 NYCRR 466.1(b), and such other postings as that Division may require with respect to New York State's laws, codes, rules, and regulations governing discrimination in employment.



§ 16.1.4 The Contractor will state in all solicitations or advertisements for employees placed by, or on behalf, of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, **sex, (including trans-gender), sexual orientation,** or national origin.

§ 16.1.5 The Contractor will comply with provisions of Sections 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the Contractor's books, records and accounts by the Owner, the State Commissioner of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these nondiscrimination clauses and such sections of the Executive Law and Civil Rights Law.

§ 16.1.6 The Contractor will send to each labor union, or representatives of workers, with which it has, or is bound by a collective bargaining or other Agreement or understanding notices obtained from the State Commissioner of Human Rights, advising such Labor Union or representative of the Contractor's Agreement under requirements of this Article. If the Contractor was directed to do so by Owner as part of the Bid, the Contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, color, **sex, (including trans-gender), sexual orientation,** or national origin and that such labor union or representative either will affirmatively cooperate within the limits of its legal and contractual authority in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the Owner and State Commissioner of Human Rights of such failure or refusal.

§ 16.1.7 The Agreement may be forthwith canceled, terminated or suspended in whole, or in part, by Owner upon the basis of a finding made by the State Division of Human Rights, that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future Contracts made by, or in behalf of, the State, or Authority or Agency of the State, or Housing Authority or an Urban Renewal Agency, or Contracts requiring the approval of the Commissioner of Housing and Community Renewal, until it has satisfied the State Division of Human Rights, that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such findings shall be made by the State Division of Human Rights after conciliation efforts by the Division have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Division, notice thereof has been given to the Contractor, and an opportunity has been afforded by the Contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked immediately of, or in addition to sanction in remedies otherwise provided by law. If the Agreement is canceled or terminated under provisions of this Article, in addition to other rights of Owner provided in the Agreement upon its breach by the Contractor, the Contractor will hold Owner harmless against any additional expenses or costs incurred by Owner in completing the work or in purchasing the services, materials, equipment or supplies contemplated by Agreement and Owner may withhold payments from the Contractor in an amount sufficient for this purpose and recourse may be had against authority on the Performance Bond if necessary.

§ 16.1.8 The Contractor will include the provisions of this Article in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontractor or purchase order as the State Division of Human Rights or the Owner may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or a vendor, as a result of such direction by the State Division of Human Rights, the Contractor shall promptly so notify the Owner and the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

## § 16.2 Waiver of Immunity

§ 16.2.1 The Contractor hereby agrees to the provisions of Paragraph 139-a and 139-b of the New York State Finance Law and Section 103-a of the New York General Municipal Law, which require that upon the refusal of a person, when called before a grand jury, head of a State department, temporary State commission or other State agency, or the organized crime task force in the Department of Law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any

political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

§ 16.2.1.1 Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with New York State or any public department, agency or official thereof for goods, work or services, for a period of five years after such refusal.

*(Paragraph deleted)*

§ 16.2.1.2 Any and all contracts made with the State of New York, or any public department, agency or official thereof since the effective date of this law, by such person, and by an firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by the State of New York without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the State of New York for goods delivered or work done prior to the cancellation or termination shall be paid.

### § 16.3 Non-Collusive Clause as Required by NYS General Municipal Law Section 103-d

*(Paragraph deleted)*

§ 16.3.1 Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.

*(Paragraph deleted)*

§ 16.3.2 By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief, the following:

*(Paragraph deleted)*

§ 16.3.2.1 The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competitions, as to any matter relating to such prices with any other bidder or with any competitor.

§ 16.3.2.2 Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.

*(Paragraph deleted)*

§ 16.3.2.3 No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

§ 16.3.3 A bid shall not be considered for award nor shall any award be made where requirements of this Article have not been complied with; provided however, that in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which set forth in detail the reasons therefore. Where requirements of this Article have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing agent of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

*(Paragraph deleted)*

§ 16.3.4 The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed, or pending, publication of new or revised price list for such items, or (c) has sold the same items to other customers at the same prices being bids, does not constitute a disclosure within the meaning of this Article.

§ 16.3.5 Any bid hereafter made to any political subdivision of the state or any public department, agency official

thereof by a corporate bidder for work or services performed or to be performed or good sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

*(Paragraph deleted)*

#### **§ 16.4 Assignment of Public Contracts**

As provided in Section 109 of the General Municipal Law, the Contractor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the same, or of his right title, or interest therein, or his power to execute such contract or any other person or corporation without the previous consent in writing of the officer, board or agency awarding the contract. If any contractor, to whom any contract is let, granted and awarded, as required by law, by any officer, board or agency in a political subdivision, or of any district therein, shall without the previous written consent specified in subdivision one of this section, assign, transfer, convey, sublet or otherwise dispose of such contract, or his right, title or interest therein, or his power to execute such contract, to any other person or corporation, the officer, board or agency which let, made, granted, or awarded such contract shall revoke and annul such contract, and the political subdivision or district therein, as the case may be, and such officer, board or agency shall be relieved and discharged from any and all liability and obligations growing out of such contract to such contractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such contractor, and his assignees, transferees or sublessees shall forfeit and lose all moneys, theretofore earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent, or affect an assignment by any such contractor for the benefit of his creditors made pursuant to the laws of this state.

#### **§ 16.5 Fingerprinting**

Pursuant to the Safe Schools Against Violence in Education Act ("SAVE" legislation) and Part 87 of the Regulations of the Commissioner of Education, any individual who, as a result of their work on this capital project, will move (or migrate) in and out of student occupied areas for more than five (5) days a year, must be fingerprinted. The Contractor shall be responsible to ensure that it (and its employees) are in full compliance with the fingerprinting provisions New York's SAVE Legislation and Part 87 of the Regulations of the Commissioner of Education at the Contractor's sole cost and expense.

*(Paragraph deleted)*

### **ARTICLE 17 NEW YORK STATE LABOR LAW REQUIREMENTS**

#### **§ 17.1 Working Hours**

*(Paragraph deleted)*

**§ 17.1.1** The Contractor specifically agrees as required by the New York State Labor Law ("Labor Law"), Sections 220 and 220-d, as amended, that:

- .1 No laborer, worker, or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or any part of the work included in the Contract Documents shall be permitted or required to work more than eight hours in any one calendar day or more than five (5) days in any one week, except to the extent permitted in the case of extraordinary emergencies described in the Labor Law.
- .2 The wages to be paid to each laborer, worker, or mechanic in the employ of the Contractor, Subcontractor, or other person doing or contracting to do all or any part of the work included in the Contract Documents for a legal day's work shall be not less than the prevailing rate of wages as defined by the Labor Law.
- .3 Each laborer, workman or mechanic employed by the Contractor, a Subcontractor, or other person doing or contracting to do all or any part of the work included in the Contract Documents shall be provided the supplements required by Article 8 of the Labor Law.
- .4 The minimum hourly rate of wage to be paid shall be not less than that stated in the General Conditions, and shall be as designated by the industrial Commissioner.
- .5 The Contractor's and any Subcontractor's or other person's filing of payrolls in a manner prescribed by subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to the to the Owner's payment of any sums due and owing to the Contractor, Subcontractor or other party for work done on or with respect to the Project.

## § 17.2 Wage Rates

*(Paragraph deleted)*

§ 17.2.1 The Contractor specifically agrees, as required by the Labor Law, that the Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

- .1 the prevailing wage rates as provided in Labor Law Section 220(3) as amended, or,
- .2 the minimum wage rates as provided in Labor Law Section 220-d, as amended.

§ 17.2.2 The Contractor shall comply with Prevailing Wage Rates as issued by the State of New York Department of Labor for the location and duration of this Project. Current wage rates for this project are included in the Project Manual as part of the Contract Documents. The Contractor is responsible to regularly review "Prevailing Wage Schedules/Updates" available on the "Prevailing Wage/Public Work" link on State of New York Department of Labor "Business in New York" web page ([www.labor.state.ny.gov](http://www.labor.state.ny.gov)) to identify and implement any applicable changes to Prevailing Wage Rates during the Project.

*(Paragraph deleted)*

§ 17.2.3 The Contractor shall comply with all the requirements of the Labor Law Section 220-a, as amended, regarding mandatory submission of certified payroll records, which shall be included with each application for payment.

*(Paragraphs deleted)*

## § 17.3 Anti-Discrimination

§ 17.3.1 The Contractor specifically agrees, as required by the provisions of Section 220-e of the Labor Law, as amended, that:

- .1 In the hiring of employees for the performance of work under the Contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall be reason of race, creed, color, **sex (including transgender)**, sexual orientation, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- .2 No contractor, subcontractor, nor any person on its behalf, shall in any manner, discriminate or intimidate any employee hired for the performance of work under the contract on account of race, creed, color, sexual orientation, or national origin.
- .3 There may be deducted from the amount payable to the Contractor by the Owner under the contract a penalty at fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract; and
- .4 The Contract may be canceled or terminated by the Owner, and all monies due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract.

## ARTICLE 18 GENERAL MUNICIPAL LAW REQUIREMENTS OF THE STATE OF NEW YORK

### § 18.1 Payment of Contractors and Subcontractors

§ 18.1.1 The Contractor specifically agrees it is bound by Section 106-b of the New York General Municipal Law.

## ARTICLE 19 SPECIFIC CONFORMANCE TO THE LAWS OF THE STATE OF NEW YORK

### § 19.1 Statutory Requirements

§ 19.1.1 The parties agree that each is bound to the provisions of the laws of the State of New York governing bidding and contracting for public improvement projects, including but not limited to applicable provisions of the General Obligations Law, Labor Law, and General Municipal Law. To the extent any provisions in the Contract Documents conflict with any provisions of New York Law, the statutory provisions shall prevail and the conflicting provisions in the Contract Documents shall be deemed to conform to the statutory provisions.

§ 19.1.2 To the extent the laws of the State of New York governing bidding and contracting for public improvement projects mandate inclusion of specific terms in contracts for such improvements, but which are not already included in these General Conditions, such terms shall be deemed and hereby are incorporated into these General Conditions.

# Additions and Deletions Report for AIA® Document A232® – 2019

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## PAGE 1

### NANUET BOND PROJECTS PHASE 4

Nanuet HS School: 50-01-08-03-0-003-036

Barr Middle School: 50-01-08-03-0-004-021

Miller Elementary School: 50-01-08-03-0-001-025

(Name, legal ~~status~~, status and address)

Jacobs  
500 7<sup>th</sup> Ave, 17<sup>th</sup> Floor  
New York, NY 12601  
T. 646.908.6550

...

(Name, legal ~~status~~, status and address)

Nanuet School District  
101 Church Street  
Nanuet, NY 10954  
T. 845.343.1481

(Name, legal ~~status~~, status and address)

KSQ Architects, PC (dba KSQ Design)  
215 West 40<sup>th</sup> Street, 15<sup>th</sup> Floor  
New York, NY 10018  
T. 914.628.3700

## PAGE 2

**15 CLAIMS AND DISPUTES**

**16 SPECIAL CONDITIONS**

**17 NEW YORK STATE LABOR LAW REQUIREMENTS**

**§ 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 (~~hereinafter, the "Agreement"~~), and consist of the Bidding Documents (including, but not limited to, Invitations to Bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of the addenda relating to bidding requirements), the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the ~~Agreement~~, 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, ~~Directive~~ or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements.~~

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for ~~Construction~~. ~~Construction~~ (~~hereinafter, the "Contract"~~). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

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

**§ 1.1.2.2** The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable statutes, codes, laws, ordinances and regulations.

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

**§ 1.1.8 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~~. services and general requirements for the Project.

**§ 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, materials including those in electronic form.

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#### **§ 1.1.11 Miscellaneous Definitions**

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

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

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

**§ 1.1.11.4** "Accepted," "directed," "permitted," "requested," "required," and "selected" are used herein as term connections and unless specifically noted otherwise are to mean "accepted by the Architect," "directed by the Architect," "permitted by the Architect," "requested by the Architect," "required by the Architect," and "selected by the Architect." However, no such implied meaning will be interpreted to extend the Architect's responsibility into the Contractor's areas of construction supervision.

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

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

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

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

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

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

**§ 1.1.11.11** The term "replace" or similar term shall mean "restore," "renew," "make good," "reconstruct," or "as applicable using new product."

**§ 1.1.11.12** 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 where in sight in crawl spaces or service tunnels.

**§ 1.1.11.13** 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.

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

**§ 1.1.11.15** "Wiring" shall be understood to mean wires or cables with conduit, fittings, boxes, etc., installed complete.

§ 1.1.11.16 "Piping" shall be understood to mean all pipes, fittings, nipples, valves and all accessories connected thereto.

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

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

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

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

§ 1.2.1.2 The Contractor and its Subcontractors shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation (1) location, layout, and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools, equipment, (5) Owner occupancy requirements and constraints, (6) site safety logistics plan and any phased construction plan and (7) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. No adjustments will be made in either the Contract Sum or Contract Time for any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 1.2.1.2.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications including, without limitation, items in connection with prefabricated or prefinished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified in the Contract Documents. If necessary, such work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

#### **PAGE 6**

§ 1.2.4 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 or (2) comply with the more stringent requirements; either or both in accordance with the Architect's interpretation. Where the Contractor perceives a conflict, it shall inform the Architect and Owner thereof and request a decision from the Architect, which shall be promptly communicated by the Architect to the Contractor so as not to cause any delay in the performance of the Work. Any Work performed after perceiving the conflict and prior to resolution by the Architect shall be at the Contractor's risk. The terms and provisions of this Section 1.2.4, however, shall not relieve the Contractor of any of the obligations set forth elsewhere herein.

- .1 The Contractor shall not scale Drawings. Dimensions on large scale drawings take precedence over dimensions on small scale drawings. The Contractor shall notify the Architect if additional dimensions are needed. The Contractor shall field verify all dimensions.



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

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

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

§ 1.5.1 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 do not own or~~ and cannot 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.

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§ 1.5.3 The Contractor may not reproduce the Contract Documents in whole or in part for use as shop drawing backgrounds without the prior written consent of the Architect. If consent is given, the Architect shall determine the extent that the Contract Documents may be used in the preparation of shop drawings, as well as the fee that the Architect will be paid, if any and in the Architect's sole discretion, by the Contractor for such use of copyrighted documents.

§ 2.1.3 The Owner, Architect or Construction Manager shall not supervise, direct or have control or authority over, nor be responsible for, the Contractor's 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 and regulations applicable to the furnishing or performance of the Work. The Owner, Architect and Construction Manager shall not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

**§ 2.2 Evidence of the Owner's Financial Arrangements – Intentionally Omitted.**

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

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

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

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

**§ 2.3.1** ~~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~~ All permits and fees, 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. ~~facilities are the responsibility of the Contractor under the Contract Documents with the exception of the building permit, which the Owner will obtain from the State Education Department.~~

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

**§ 2.3.5** ~~The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~ make available for inspection, upon request, that field survey or testing information of existing conditions that is known to be available and that is held by the Owner at its offices. Such records and documents are not Contract Documents, and the Owner makes no representation as to their accuracy or completeness. Notwithstanding the foregoing, information furnished by the Owner in the form of surveys, subsurface investigation reports, soil borings, and other material of a similar nature, is for general information only and is not a guarantee of the completeness or accuracy of such information, unless specifically noted otherwise herein. The Contractor shall verify all existing grades, conditions, and dimensions of existing physical conditions and structures and shall report any inconsistencies in writing to the Architect. The Contractor shall establish all lines and levels required to execute the Work and shall bear all costs involved, and shall be responsible for their accuracy and maintenance.

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

**§ 2.3.7** ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents~~ five (5) sets of Contract Drawings and Project Manuals for use during construction for their own use and for purposes of making reproductions pursuant to Section 1.5.2. The 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. Subcontractors and other entities desiring copies of Drawings will be provided sets at the cost of printing, postage and handling.

#### PAGE 9

If the Contractor ~~(1) fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly 12.2, or (2) fails to carry out Work in accordance with the Contract Documents, the Contract Documents as determined by the Owner, Architect or Construction Manager, or (3) fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or (4) fails to remove and discharge (within seven (7) days) any lien filed upon Owner's property by anyone claiming by, through, or under the Contractor, or (5) fails to perform the Work in a safe manner and in compliance with all applicable health and safety requirements and the Contractor's site specific health and safety plan or (6) disregards the instructions of the Architect, Owner or Construction Manager, as determined by the Owner, Architect or Construction Manager,~~ 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.~~ entity. Such order or stoppage by the Owner shall not constitute grounds for termination by the Contractor under Article 14 and shall not be a basis for an extension of the Contract Time under Section 8.3 or Article 15.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents ~~and fails within a ten-day period after receipt of (including but not limited to all applicable health and safety requirements) and fails within a three (3) work day period after receipt of written notice~~ from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner ~~may, may after such three (3) work day period,~~ without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to 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 such deficiencies. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including the 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 and other expenses made necessary by such default, neglect or failure.~~ Such Change Order or Construction Change Directive shall be deemed to have been executed by the Contractor, whether or not actually signed by the Contractor. Such action by the Owner and amounts charged to the Contractor shall be equally binding upon the Contractor's performance and payment bond surety. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. ~~If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~

## **§ 2.6 Extent of Owner's Rights**

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

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

## **PAGE 10**

The term "Contractor" used herein shall include:

1. That Contractor normally responsible for that Work referenced.
2. "Prime Contractor" meaning either General Contractor, HVAC Contractor, Plumbing Contractor, Electrical Contractor, or any other Contractor whom the Owner has a direct contractual relationship for the referenced Work.
3. "Trade Contractor" meaning the Prime Contractor as above.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents. plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

**§ 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.

**§ 3.1.4** The Contractor shall not be relieved of 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.

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§ 3.2.1.1 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the Contract Documents relative to that portion of the Work, as well as with 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, shall observe any conditions at the site affecting it, and shall at once report in writing to the Construction Manager and the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner, the Construction Manager or the Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor knew or reasonably should have known of such error, inconsistency or omission and failed to report it as required by this section to the Construction Manager and the Architect. If the Contractor performs any construction activity knowing it involves, or reasonably should have known it involves, a recognized error, inconsistency or omission in the Contract Documents without such notice to the Construction Manager and the Architect, the Contractor shall assume full responsibility for such performance and shall bear sole responsibility for the costs for correction.

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

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

§ 3.2.2 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. The Contractor shall be presumed to have examined the Project site(s) to consider fully all conditions that may have a bearing on the Work and to have accounted for these conditions its proposal. The Contractor is deemed to be a qualified expert in the systems and construction requirements of the Work of its Contract. The Contractor hereby specifically acknowledges and declares that the Contract Documents are full and complete, are sufficient to have enabled it to determine the cost of the Work, and that the Drawings, the Specifications, and all Addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, building codes, and regulations, and otherwise to fulfill all of its obligations under the Contract Documents. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Construction Manager and the Architect at once. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other Contractors, is not guaranteed by the Architect, Construction Manager or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner. Except as to any reported errors, inconsistencies or omissions, and except as to concealed or unknown conditions, by executing the Agreement, the Contractor represents to the Owner, Construction Manager, and the Architect that the Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedure and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry

standards applicable to Work; (3) the requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the 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. shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.12.

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

**§ 3.2.5** If the Contractor, during the progress of the Work, discovers any discrepancies between the Drawings and the Specifications, errors and/or omissions on the Drawings, or any discrepancies between physical conditions of the Work and the Drawings, and has notified the Architect and Construction Manager in writing under Section 3.2.1, no deviations from the Contract Documents shall be performed by the Contractor until it receives approval in writing from the Architect through the Construction Manager. Any Work performed after such discovery without the approval of the Architect shall be at the Contractor's sole risk and expense.

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

**§ 3.2.7** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or RFIs pursuant to Sections 3.2.1, 3.2.2, 3.2.4, 3.2.5 or 3.2.6, the Contractor shall make a Claim as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.1, 3.2.2, 3.2.4, 3.2.5 or 3.2.6, the Contractor shall pay such costs and damages to the Owner 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 the Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

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

§ 3.2.8.1 The Contractor shall be required to establish centerlines, elevations and location of his work when it is required for the benefit of other Contractors needing the information to coordinate location of their work.

§ 3.2.9 Whenever the Drawings show existing or other construction not required as part of the Contract Work, it is understood that it is so shown as a matter of information and that the Owner, while believing such information to be substantially correct, assumes no responsibility thereof. The Contractor shall make itself familiar with all conditions affecting the nature and manner of conducting the Work.

§ 3.2.10 Claims for additional compensation or extension of time due to the Contractor's failure to familiarize itself with the conditions at the site will not be allowed.

## **PAGE 12**

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and ~~attention~~-attention, and shall complete the Work in a good and workmanlike manner in accordance with the Contract Documents. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and ~~procedures~~, 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, subject to the coordination of the Construction Manager. Where the Drawings or Project Manual make reference to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in connection with the Contractor's Work, such reference is intended only to indicate that the Contractor's Work is to produce at least the quality of the work implied by the operations described, but the actual determination as to whether or not the described operations may be safely or suitably employed in the performance of the Contractor's Work shall be the sole responsibility of the Contractor. All loss, damage, liability, or cost of correcting defective Work arising from the employment of a specific construction means, method, technique, sequence, or procedure shall be borne solely by the Contractor.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, ~~Subcontractors~~-Subcontractors, Suppliers, and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its ~~Subcontractors~~-Subcontractors, Suppliers or Sub-subcontractors, and for any damages, losses, costs and expenses resulting from such acts or omissions, including but not limited to reasonable attorneys' fees.

§ 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~~-coordinating the work of its own forces and the work of Subcontractors engaged by it to perform the Work of the Project on its behalf. The Contractor shall supply to its own work forces, and Subcontractors engaged by it to perform portions of its Work, copies of the Drawings and Project Manuals for the work to be performed by such individuals/entities on its behalf.

§ 3.3.3.1 The Contractor shall coordinate its operations and cooperate with those of other Contractors performing work on the Project or site thereof to ensure efficient and orderly installation of each part of the Work. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the Work. The Contractor shall remain informed of the progress and the detail work of other Contractors and shall notify the Construction Manager immediately of lack of progress or defective workmanship on the part of other Contractors, where such delay or such defective workmanship will interfere with Contractor's own operations. Failure of the Contractor to keep informed of the work progressing on the site or to give notice of lack of progress or defective workmanship by others shall be construed as acceptance of the progress of work and coordination with Contractor's own Work.



- § 3.3.3.2** The Contractor's obligations under the Contract Documents shall include, without limitation, the following:
- .1 Review of all specified construction and installation procedures with its employees and/or Subcontractors, including, without limitation, those recommended by manufacturers, prior to the commencement of the relevant portion of the Work to be performed.
  - .2 Advising the Construction Manager and the Architect:
    - .1 if a specified procedure deviates from best construction practice;
    - .2 if following a procedure will affect any warranties, including the Contractor's general warranty; or
    - .3 of any objections the Contractor may have to a procedure.
  - .3 Proposing alternative procedures, as appropriate, which procedures shall be covered by the Contractor's warranty as described in Section 3.5 hereof.
  - .4 The Contractor shall be responsible for organizing and conducting pre-installation conferences and must coordinate such conferences with the Architect and the Construction Manager.
- § 3.3.3.3** The Contractor and its Subcontractors working on the Project shall attend a preconstruction conference(s) or meeting(s) as deemed necessary by the Construction Manager to coordinate all Work (e.g., demolition, installation, etc.), and as required by the Project Manual.
- § 3.3.4** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or the Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor. The Contractor shall maintain complete inspection records and test date to ensure the quality of the Work is in strict compliance with the requirements of the Contract Documents.
- § 3.3.5** Where equipment lines, piping, ductwork, 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. The Contractor shall coordinate the work of its Subcontractors and prevent all interferences between or among equipment, lines of piping, and architectural features, and avoid any unsightly arrangements in exposed areas. This Section shall not be construed as limiting any obligation of the Contractor under any other provision of the Contract Documents.
- § 3.3.6** 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.
- § 3.3.7** The Contractor, its employees and Subcontractors, shall be subject to such rules and regulations for the conduct of Work as the Owner may establish, including but not limited to, the Construction Rules and Regulations set forth in Section 3.13.4. The Contractor shall be responsible for the enforcement among its employees of the Owner's instructions.
- § 3.3.8** The Contractor shall inspect all materials as delivered to the Project site and shall reject any materials that will not conform with the requirements of the Contract Documents when properly installed.
- § 3.3.9** The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body having jurisdiction over the Project. Failure to obtain any permits, licenses or other approvals because of the failure of the Contractor to conform to this requirement shall not extend the Contract time, and the Contractor shall not be entitled to any increase in the Contract Sum therefore. In addition, any additional costs and expenses of any nature incurred by the Owner as a result of the Contractor's failure to conform to this requirement shall constitute a charge against the Contractor's Contract.
- § 3.3.10 Shutdowns:** Such work as connections to existing sewers, plumbing, heating, and electrical systems shall be coordinated at a time agreeable to the Owner, the Architect, and the Construction Manager, and shall be determined and agreed to well in advance of the actual performance of such work so as to interfere as little as possible with the operation and use of the Owner's existing facilities. Shutdowns must be coordinated through the Construction Manager. The continued uninterrupted operation of all facilities of the Owner's buildings is essential. If any existing facilities must be interrupted, the Contractor for the Work shall provide all necessary temporary facilities and connections necessary for maintaining these existing facilities at no increase in the Contract Sum except as otherwise specified. No mechanical, heating, plumbing, sprinkler, or electric service shall be interrupted at any time except as



approved in advance by the Owner or when the buildings are not occupied and shall be coordinated with the Owner, as well as the Construction Manager. All communication systems must be maintained without interruption. As much related work as possible shall be performed prior to shutdowns, so as to minimize the period of shut down. All material, equipment, and manpower necessary in the performance of a shutdown shall be on site prior to interruption of service.

PAGE 14

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for ~~labor,~~ labor (at applicable prevailing wage rates), 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. All materials provided by Contractor shall be new. The Contractor shall work continuously and expeditiously through completion of the Work. Time is of the essence.

§ 3.4.1.1 Notwithstanding any other provision of the Contract Documents, Contractor shall perform at least twenty five (25%) percent of the field work with its own full-time employees. For the purpose of the preceding sentence any part of the work performed by supervisory personnel (persons above level of foreman) or by office personnel shall not be considered part of the Work performed by Contractor's employees. Such items as bonds, certificates, shop drawings and similar items are not to be counted as satisfying the twenty five (25%) percent requirement.

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

§ 3.4.1.2 The Contractor shall be responsible for the care and protection of all equipment and materials for its Work on the Project, including equipment and material furnished by the Owner.

§ 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 resulting 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,~~ them, or persons who within the last five (5) days (a) having been exposed to someone having been diagnosed with a COVID-19 infection; or (b) having had a persistent cough, shortness of breath, or a fever of 100.4 or higher. The Owner reserves the right to have any persons removed from the Project upon reasonable objection.

§ 3.4.3.1 In addition to all other safety requirements, the Contractor shall provide suitable and a sufficient number of safety related facilities and personal protective equipment (PPE) at the site related to protection against the spread of COVID-19, including but not limited to handwashing stations, hand sanitizer, gloves, masks, faceshields, and other equipment as the Owner may reasonably request. Notwithstanding the foregoing, nothing herein shall be construed to delegate or relieve Contractor from having sole and exclusive responsibility for all worksite safety.

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

§ 3.4.5 Employees of the Contractor or its Subcontractors whose work is unsatisfactory to the Owner, Construction Manager or Architect, or considered by them to be unskilled or otherwise objectionable, will be immediately dismissed from the Project upon notice from the Construction Manager. Those dismissed employees shall be immediately replaced by the Contractor so as not to delay progress of the Work and at no additional cost to the Owner. **All employees of the Contractor or Subcontractor shall be processed through the Owner's database which excludes sex offenders and other people not deemed safe for presence on a school site. Any person who is**

**flagged by that system shall not be employed on site. Further, the Contractor or its Subcontractor shall not employ any person onsite who is known to them to be a sex offender as defined by New York State.**

**§ 3.4.6** On receipt of the signed Contract, the Contractor will be expected to place firm orders with vendors for needed materials, including Subcontractors and major material suppliers. If deemed necessary to assure delivery of materials at times needed, the Contractor may accept delivery of such materials at any time, and may include the cost of such materials in its next monthly Application for Payment, provided such materials have actually been delivered to Contractor and properly stored by it with approval or under direction of the Architect and the Construction Manager either at the Project site or in an approved storage shed or warehouse, as provided elsewhere in these General Conditions.

**§ 3.4.6.1** To the fullest extent possible, the Contractor shall provide products of the same kind, from a single source. When two or more items of same material or equipment are required (pumps, valves, air conditioning units, etc.) they shall be of the same manufacturer. Product manufacturer uniformity does not apply to raw materials, bulk materials, pipe, tube, fittings (except flanged and grooved types), sheet metal, wire, steel bar stock, welding rods, solder, fasteners, motors for dissimilar equipment units, and similar items used in the work, except as otherwise indicated. The Contractor shall provide products which are compatible within systems and other connected items. If Contractor is given option of selecting between two or more products for use on the Project, product selected shall be compatible with products previously selected, even if previously selected products were also options.

**§ 3.4.6.2** The Contractor is responsible for providing products and construction methods compatible with products and construction methods of other contractors. If a dispute arises between the Contractor and other contractors over concurrently selectable but incompatible products, the Architect will determine which products shall be used.

**§ 3.4.6.3** With respect to sitework materials, all products submitted for use and incorporated into the Project shall be on the Approved List of Materials and Equipment published by the NYSDOT Materials Bureau, most recent edition.

**§ 3.4.6.4** When required, off-site storage shall be the responsibility of the Contractor. If materials are stored off site, the Contractor shall furnish proof of title by Owner and provide a certificate of insurance demonstrating adequate insurance coverage.

**§ 3.4.6.5** The Contractor shall deliver all materials at such times as will ensure speedy and uninterrupted progress of the Work.

**§ 3.4.6.6** 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. The Owner reserves the right to object to Contractor's use of persons who appear unfit or not skilled in the tasks assigned to them. Should any disorderly, incompetent, unfit, unskilled or objectionable person be hired or employed by the Contractor, upon or about the Premises of the Owner, for any purpose or in any capacity, they shall, upon request of the Owner, be removed from the Project and not again be assigned thereon without the written permission of the Owner.

**§ 3.4.6.7** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, within 10 days of receipt of the signed Contract, shall furnish in writing the Owner through the Construction Manager and Architect a list showing the name of the manufacturer proposed to be used for each of the products identified in the Specifications, and where applicable, the name of the installing Subcontractor. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or Architect, after due investigation, has reasonable objection to any such proposed manufacturer or installer. If adequate data on a proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides additional data. Failure of the Owner or Architect to promptly reply shall constitute notice of no reasonable objection. Failure to object to a manufacturer or installer shall not constitute a waiver of the requirements of the Contract Documents, and products furnished by the listed manufacturer shall conform to such requirements.

**§ 3.4.7** The Contractor warrants that it has good title to all materials used by it in, on or in connection with the Work. No materials or supplies shall be purchased by the Contractor or any of its Subcontractors that are subject to any

chattel mortgage, conditional sale, or other agreement by which an interest is retained by the seller.

**§ 3.4.8** The Contractor shall make every reasonable effort to avoid labor disputes and to insulate the Owner, Architect and Construction Manager from the effects of labor disputes should any arise. There shall be no strikes, picketing, work stoppages, slowdowns, or other disruptive activity at the Project for any reason by anyone employed or engaged by the Contractor to perform its portion of the Work. There shall be no lockout at the Project by the Contractor. The Contractor shall be responsible for providing the manpower required to proceed with the Work under any circumstance. For the purposes of this Section, every reasonable effort shall include, but not necessarily be limited to:

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

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

**§ 3.4.8.5.1** No extension of time shall be granted for delays caused by labor or material disputes.

**§ 3.4.8.5.2** Should it become necessary to create a separate entrance for a Contractor involved in a dispute, all costs associated with creating that entrance shall be borne by the Contractor involved in the dispute. Such costs shall include, but not limited to signage, fencing, temporary roads and security personnel as deemed necessary by the Owner for the safety of the occupants of the site.

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

**§ 3.4.8.7** The Contractor shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes or strikes arising from the labor practices of the Contractor or its Subcontractors, Suppliers or Sub-subcontractors.

**§ 3.4.9** The Contractor and its Subcontractors employed upon the Work shall abide by and conform with all labor laws and to all other laws, ordinances, and legal requirements now or hereafter applicable to the Work and the construction area.

**§ 3.4.10** The Contractor and its Subcontractors shall be responsible for protection of the Work, the work of Separate or other Contractors, and existing construction, both on and off the site, and in the event of damage, shall restore the same to the original condition at no additional cost to the Owner.

**§ 3.4.11** If the Work is to be performed by trade unions, the Contractor shall, with the consent of the Owner and the Architect, which shall not be unreasonably withheld, make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind, at any time in force among members or councils that regulate or distinguish what activities are included in the work of any particular trade.

**§ 3.4.12** No new asbestos containing building materials shall be used in construction. No materials containing asbestos in any form shall be used in, on, or around the Owner's buildings.

### **§ 3.4.13 Equivalents and Substitutions**

**§ 3.4.13.1 Equivalents.** In the Specifications, one or more kinds, types, brands, or manufacturers or materials are regarded as the required standard of quality and are presumed to be equal. The Contractor may select one of these items or, if the Contractor desires to use any kind type, brand, or manufacturer or material other than those named in the Specifications, it shall indicate in writing, and prior to award of the Contract, what kind, type, brand or manufacturer is included in the base bid for the specified item. The Contractor shall follow the submission requirements for equivalents as provided in the Project Manual. Any proposed equivalent shall not be purchased or installed by the Contractor without the Architect's review process having been completed and the product accepted by written notification.

**§ 3.4.13.2 Substitutions.** After the Contract has been executed, the Owner, Construction Manager and Architect will consider a formal request for the substitution of products in place of those specified only under conditions set forth in the Specifications.

**§ 3.4.13.3** By making said requests in conformance with procedures established herein and elsewhere in the Project Manual, the Contractor: (1) represents that it has personally investigated the proposed substitute product and has determined that it is equal to or superior in all respects to that specified; (2) represents that the warranty for the substitution will be the same, or greater than, that applicable to the specified product; (3) certifies that the cost data is complete and includes all related costs under the Contract, including professional services necessary and/or required for the Architect or its consultants to implement said substitution and waives any and all claims for additional costs related to the substitution which subsequently become apparent; (4) represents that it will coordinate the installation of the accepted substitute, making all such changes to the Drawings effected by the change, including but not limited to the electrical, plumbing, site work and heating and ventilating Specifications as may be required for the Work to be complete in all respects; and (5) represents that it will reimburse the Owner for all additional costs billed by the Architect or its consultants for the review of the substitution request(s), any redesign of the Work of this Contractor or associated contractors, additional site visits related to the substitution request and for the work to prepare Change Orders or Construction Change Directives.

**§ 3.4.13.4** Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions:

1. required for compliance with interpretation of code requirements or insurance regulations then existing;
2. unavailability of specified products, through no fault of the Contractor;
3. subsequent information discloses inability of specified products to perform properly or to fit in designated space;
4. manufacturer/fabricator refuses to certify or guarantee performance of specified products as required;
5. when in the judgment of the Owner, a substitution would be substantially in the Owner's best interests, in terms of costs, time or other considerations; and
6. where the Contractor establishes that the substituted product is equal or better than the specified product in all respects.

## **PAGE 17**

**§ 3.5.1** The Contractor warrants to the Owner, Construction Manager, 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 good title to all materials, supplies, and equipment installed or incorporated in the Work. 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 All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of the Owner. If required by the Architect, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract Documents. The Contractor shall perform the Work in strict accordance with the Contract Documents and best industry practices. The Contractor, at its expense, shall upon demand by the Owner, Construction Manager or Architect remove and replace materials not meeting specifications or materials failing to perform as represented or warranted by the manufacturer, regardless of whether incorporated into the Work. The Contractor shall promptly replace or correct any

Work or materials that the Owner, Construction Manager or Architect rejects as failing to conform to the requirements of the Contract Documents. The foregoing warranty obligations shall survive completion or termination of the Contract, are not limited by the provisions of Article 12, and are in addition to and not in limitation of any other warranty, right or remedy set forth in the Contract Documents or otherwise prescribed by law.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor warrants the Work and its performance to the Owner unconditionally. The Contractor shall perform all warranty obligations and responsibilities for the Work under the Contract Documents. The Contractor, at its own expense, shall remedy defects due to improper and/or defective workmanship or materials appearing within **two (2) years** of the Contractor completing the Work or such longer period as may be set forth in the Contract Documents ("Correction Period"), as further described in Article 12 of this Agreement. Upon completion of the Work, the Contractor shall assign and provide to the Owner all written warranties and guarantees from Subcontractors, suppliers, and material or equipment manufacturers. The Contractor shall fully cooperate with the Owner in the event the Owner pursues remedies under any warranties or guarantees assigned to the Owner. The Contractor acknowledges that its obligations to the Owner under this Section 3.5.2 and under Section 12.2 are joint and several with its Subcontractors, suppliers, vendors and manufacturers of all materials and equipment supplied on account of the Work. The Contractor is responsible for all harm caused by its failure to maintain equipment and materials installed through the Contractor's completion of its Work. The requirements of this Section 3.5 will continue notwithstanding termination of the Contractor for any reason. The foregoing warranty obligations are not limited by the provisions of Article 12, do not limit the Owner's assertion of a breach of warranty obligations following the three-year Correction Period, and are in addition to and not in limitation of any other warranty set forth in the Contract Documents or required by law.

**§ 3.5.3** No warranties or guarantees by the Contractor will deprive the Owner of any cause of action, right, or remedy otherwise available for breach of any of the provisions of the Contract Documents. The Correction Period does not limit the time in which the Owner may pursue any such action, right, or remedy.

**§ 3.5.3.1** The Contractor shall deliver to the Owner upon completion of all work under its Contract, its written guarantee made out to the Owner in a form acceptable to the Owner, guaranteeing (and he does so guarantee) all of the Work under the Contract to be free from faulty materials, and free from improper workmanship, and guarantees against injury from proper and usual wear and aging. This guarantee shall be made to cover (and does cover) a period of two (2) years from the date of Substantial Completion all work under the Contract, or for a longer period where so stipulated in the Contract Documents.

**§ 3.5.4** All required maintenance shall be the Contractor's responsibility until the Owner has accepted the Project as complete, all required maintenance and user's manuals have been turned over to the Owner, and the Owner's designated personnel have been instructed in the maintenance and operation of all applicable materials. This maintenance shall include a complete turnover procedure at the time of completion, including complete cleaning, testing and adjustment. The Contractor shall keep records of all such maintenance performed as required by this Section, including work performed and times and dates on which it was performed. These records shall be turned over to the Owner at closeout.

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

**PAGE 18**

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 payment of federal, state, and local sales and compensation use taxes on all supplies and materials incorporated into and becoming an integral component part of the structures, buildings, or real property pursuant to this Contract. Such taxes are therefore not to be included in the Contractor's bid or the Contract Sum. The Owner shall deliver to the Contractor the appropriate exemption certificate required to be supplied by the Owner, and the Contractor and its Subcontractors and materialmen shall be solely responsible for obtaining and delivering any and all exemption or other certificates and for furnishing a Contractor Exempt Purchase Certificate or other appropriate

certificates to all persons, firms, or corporations from whom they purchase supplies, materials, and equipment for the performance of the Work.

§ 3.6.1.1 The Contractor's attention is called to fact that materials not actually incorporated into Work will not be exempt from payment of sales or compensating use taxes, and the Contractor and its Subcontractor shall be responsible for and shall pay any and all applicable taxes. This will apply to such things as:

- .1 construction machinery and equipment including rentals or repair parts;
- .2 The Contractor's office supplies;
- .3 The Contractor's supplies, tools and miscellaneous equipment including forms, materials, and scaffolding (whether purchased or rented);
- .4 temporary heat;
- .5 telephone or electric services; and
- .6 any other items purchased or rented by the Contractor for the Contractor's use in performing its Work and not incorporated into realty.

§ 3.6.2 The Contractor accepts full and exclusive liability for payment of any and all contributions, assessments or taxes for unemployment insurance or old age insurance, or annuities now or hereafter imposed by the government of the United States, or by the government of any city, county or state of United States, which are measured by salaries or other remuneration paid to persons employed by the Contractor or any Subcontractor for Work performed under this Contract.

§ 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 Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for The Contractor shall, as soon as practicable, furnish the Owner, Architect, and Construction Manager with copies or certificates of all permits, fees, licenses, and inspections necessary for the proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Work, including, without limitation, all applicable building permits other than those required of the Owner under Sections 2.3.1. All inspection fees and other costs of such permits and licenses required to be obtained by the Contractor as may be imposed by any municipal or other entity shall be paid by the Contractor and shall not serve as the basis for any increase in the Contract Sum.

§ 3.7.2 The Contractor shall comply with with, and give notices required by by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor fails to give such notices, it shall be liable for and shall indemnify and hold harmless (a) the Owner, its consultants, employees, officers and agents and (b) the Architect, Construction Manager and their consultants, employees, officers and agents against any resulting fines, penalties, judgments, or damages, including reasonable attorney's fees, imposed on or incurred by the parties indemnified hereunder.

§ 3.7.2.1 In accordance with New York State Labor Law Article 8, Section 220, subd. 3-a(a), the Contractor shall submit to the Owner within 30 days after issuance of Contractor's first payroll, and every 30 days thereafter, a transcript of the original payroll record, subscribed and affirmed as true under the penalties of perjury.

§ 3.7.2.2 The Contractor shall comply with all applicable New York State Department of Labor requirements, including the provision that every worker employed in performance of a public work contract shall be certified as having completed an OSHA 10-hour safety training course. The Contractor and its Subcontractors shall be solely responsible for compliance with this requirement with respect to their employees. The Contractor's or Subcontractor's failure to comply with this requirement shall not transfer or in any way impose the responsibility for worker safety upon the Owner or the Architect.

§ 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. all costs attributable to the correction thereof or related thereto, including reimbursement to the Owner for any additional services required of the Construction Manager or Architect, or both, as well as all fines and penalties, if any.

**§ 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~~ (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~~ give prompt written notice to the Owner, Construction Manager, and the Architect ~~before conditions are disturbed~~ of such conditions before they are disturbed or affected work is performed and in no event later than ~~14~~ three (3) business days after first observance of the conditions. The Architect ~~and or~~ 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, ~~Contractor in writing, 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, it may proceed as provided in Article 15.~~ No adjustment in the Contract Time or Contract Sum will be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, and reviews, or (2) inspections, tests, and reviews the Contractor had the opportunity to make or should have performed in connection with the Project.

PAGE 20

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, including the costs for bonds 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. The Contractor is not entitled to overhead and profit on unexpended allowance amounts or any portions thereof.

...

**§ 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 designations shall be in writing and provided to the Construction Manager, Architect and Owner and shall include the qualifications of such individuals. The Superintendent shall be in attendance at the Project site throughout 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, work is stopped by the Owner, or no work is scheduled. The Superintendent shall be approved by the Owner in its sole discretion. Said representatives 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 a representative leave the Contractor's employ, the Contractor shall promptly designate a new representative. The Owner shall have the right, at any time and in its sole discretion, to direct a change in the Contractor's representatives if their performance is unsatisfactory. In the event of such a demand, the Contractor shall within seven (7) days after notification thereof, replace said individual(s) with an individual(s) satisfactory to the Owner, in the Owner's sole discretion. If said replacement is disapproved, the Contractor may, at the Owner's option, be terminated for cause. The Superintendent shall represent the Contractor, and communications given to the superintendent Superintendent shall be as 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. Each Subcontractor shall designate the Project Manager, Superintendent and other key individuals who shall be assigned to the Project. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Contractor's Superintendent shall attend all Project meetings, regardless of whether held prior to or following Substantial Completion of the Work.

**§ 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. Contractor shall provide, or otherwise see that, the Project Manager, or Superintendents or responsible workers of the Contractor and its major Subcontractors are equipped with cellular phones and radios. The Contractor shall provide the Owner, the Construction Manager, and the Architect with the number for each phone and worker.

**§ 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. Contractor's supervisory personnel, including Superintendents and their assistants, shall be versed in the English language. In the event the Contractor's supervisory personnel, Superintendents and their assistants are not versed in the English language, the Contractor shall employ the services of a full-time on-site interpreter to facilitate communications with such supervisory personnel.

**§3.9.4** The Contractor shall not reduce or terminate supervision of the Work, nor change the superintendent without the prior written approval of the Owner.

**§3.9.5** If, for any reason, the Contractor takes an action resulting in any of the changes noted in Subsection 3.9.4, the Owner may take remedial action to **ensure** continued progress of the Work, including the hiring of suitable supervisory personnel, and charge the Contractor all costs associated with these remedial actions including the costs of legal and additional construction management and architectural services.

**§3.9.6** The Contractor shall furnish the Construction Manager, in writing the names, addresses and telephone number of the members of his organization who can be contacted in the event of an off-hours emergency at the building.

**§3.9.6** The Contractor shall attend progress meetings with the Construction Manager and such other persons the owner may require. The progress meetings shall include all key personnel on the job, including the contractor and subcontractors, or other persons in charge of various phases of the work.

**§3.9.7** Prior to the commencement of Work, the Contractor shall provide the Construction Manager and the Architect with:

- .1 A written list of subcontractors, sub-subcontractors, suppliers and vendors with names, addresses, telephone numbers, and descriptions of the work they shall perform or furnish;
- .2 The name, address and telephone number of the bonding company, banking and insurance company for the Contractor including the name, address and telephone number of each bonding company's primary contact representative for the Project;
- .3 Detailed Subcontractor schedules indicating the approximate quantity of shop drawings, sequence, timing and man loading; and
- .4 A cash flow projection for the life of the Project, including a schedule and graph showing the amount of Work projected to be completed each month or billing period and a dollar value for the anticipated billings each month or billing period. This shall be completed after an agreed upon schedule of values has been approved by the Construction Manager

**PAGE 21**

**§ 3.10.1** The Contractor, ~~promptly~~ promptly, but in no event later than 14 days, after being awarded the Contract, shall prepare and submit for the Owner's and Architect's ~~information~~ information and the Construction Manager's ~~use in developing the Project schedule~~ approval a Contractor's construction schedule for the Work. ~~The Work in electronic format with predecessor logic.~~ The construction 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 Contractor's construction schedule shall provide for the orderly progression of the Work to ~~completion~~ completion, and shall not exceed time limits current under the Contract Documents. The Contractor's construction 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.

**§ 3.10.2** 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.

**§ 3.10.1.1** Time is of the essence for this Project. The Work shall be performed continuously and without interruption, so that all Work can be completed in the time set forth in the Contract Documents.

**§ 3.10.1.2** The sequence of the Work shall be scheduled with the Owner so as to minimize interference with the Owner's use of existing structures, and the Owner's approval shall be obtained prior to starting of the Work.

**§ 3.10.1.3** The Contractor shall conform to the most recent Project Schedule, and all Work shall be completed on or before the dates established in the Contract Documents. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Project Schedule and shall promptly advise the Owner and Construction Manager of any delays or potential delays.

**§ 3.10.2.1** The Construction Manager shall prepare, publish, and, from time-to-time, revise a master integrated Project Schedule based upon the construction schedules submitted by the various Prime Contractors. Failure by the Contractor to furnish any required schedule or schedule revision in a timely manner shall entitle the Construction Manager to prepare a schedule for the Contractor's Work, to which the Contractor shall be bound.

**§ 3.10.2.2** The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the construction or operations of the Owner's own forces. The Owner shall have the right, without penalty, to direct the Contractor to delay, postpone or reschedule any portion of the Work that may interfere with or disrupt the operations of the Owner.

**§ 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. conform to the most recent 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. In the event the Owner determines that the performance of the Work has not progressed to the level of completion required of the Contract Documents or that the Contractor has failed to maintain its construction schedule or the Project Schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction including without limitations, additional shifts, overtime, additional manpower or equipment as well as other similar measures (hereinafter referred to collectively as "extraordinary measures"). Such extraordinary measures shall continue until the progress of Work complies with milestone and critical path dates set forth in the Contract Documents and the Project Schedule. The Contractor shall not be entitled to an adjustment in Contract Sum or Contract Time in connection with extraordinary measures required by the Owner.

**§ 3.10.5** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not unreasonably be 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, 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.

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

§ 3.10.7 The Contractor shall perform the Work in general accordance with the most recent construction schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project Schedule. The Contractor shall monitor the progress of the Work for conformance with the requirements of its construction schedule and Project Schedule and shall promptly advise the Owner of any delays or potential delays affecting the critical path.

§ 3.10.8 If the Contractor fails to maintain the approved construction schedule or Project Schedule and meet all critical path dates for the Work, the Owner may request a recovery plan from the Contractor and reserves the right to withhold payment until such time as the Contractor submits a recovery plan. The recovery plan must show how the Work may plausibly be brought on schedule, including, as necessary, acceleration of the Work by means of overtime, additional crews, additional shifts, additional equipment or re-sequencing of the Work to achieve completion of the remaining critical path dates in the construction schedule or Project Schedule. The Contractor shall submit as part of its recovery plan: (i) a "resource loaded" schedule showing the Contractor's plan to deploy manpower per trade, per work area, per day, together with essential materials and equipment, and other resources necessary to timely accomplish the Work; and (ii) a two-week "look ahead" schedule identifying tasks to be accomplished within the coming two week period, the work areas and categories of work, and necessary manpower resources, together with other data necessary to demonstrate to the Owner the viability of the Contractor's recovery plan ("2 Week Plans"). The Contractor shall continue to submit 2 Week Plans until either the Contractor demonstrates that the Project Schedule has recovered from the unexcused delay, or the Owner notifies the Contractor in writing that further 2 Week Plans are no longer required. The cost of preparing and performing the recovery plan shall be borne solely by the Contractor. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which the Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the final completion date.

§ 3.10.9 The Contractor specifically represents and warrants to the Owner that that the Contract Sum and the Contract Time contemplate compliance with all current, and reasonable foreseeable future, federal, state and local "Stay at Home," "Social Distancing" and related orders, regulations and guidance related to limiting the spread of COVID-19 disease (the "COVID Requirements"). Accordingly, the Contractor hereby waives any claim for an increase in the Contract Sum or an extension of the Contract Time on account of the COVID Requirements. The Contractor shall promptly notify the Owner of any COVID Requirements that would impact the Project.

§ 3.10.10 Due to the ongoing COVID-19 pandemic and the resulting uncertainty with regard to, among other things, (a) what restrictions, if any, will be applicable to construction activities due to federal, state or local orders, laws, regulations or rules related to the COVID-19 pandemic (including, without limitation, social distancing, PPE, cleaning and disinfection requirements) and (b) the duration of any restrictions imposed on construction activities, the Owner may modify the schedule set forth in the Contract Documents and the Project Schedule. Similarly, restrictions, if any, that will be or are applicable to construction activities due to federal, state or local orders, laws, regulations or rules related to the COVID-19 pandemic (including, without limitation, social distancing, PPE, cleaning and disinfection requirements) may cause the Owner to have the Work or the Project commence later than the date specified in the Contract Documents. The Contractor acknowledges and agrees that there should be no additional compensation paid for schedule modifications caused directly or indirectly by the COVID-19 pandemic. The Contractor further acknowledges and agrees that its sole remedy for any schedule modifications or delays caused directly or indirectly by the COVID-19 pandemic shall be an extension of the Contract Time, if warranted. The Contractor further acknowledges and agrees that it shall have on file and provide a copy to the Owner of its written COVID-19 business reopening plan, and it shall comply in all respects with such plan for the duration of the Project. The Contractor, not the Owner, shall be responsible for compliance with its COVID-19 business reopening plan and all safety requirements associated with COVID-19 protections for workers and the general public.

**PAGE 23**

~~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. § 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 The Contractor shall maintain at the site, and shall make available to the Owner, Construction Manager and Architect, one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the prosecution of the Contractor's Work. The prints for Record Drawing use will be a set of black line prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circulating, ducts, dampers, access panels, control valves, drains, openings, and stub-outs, etc.; (v) architectural and structural changes in the design; and (vi) such other information as either the Owner or Architect may reasonably request. At the completion of the work, the Contractor shall transfer all information on record drawings to reproducible drawings with new information clouded and noted. Such drawings shall be stamped with the Contractor's name and "AS-BUILT" in the lower righthand corner. The colored record drawing and the as-built reproducible drawing shall be forwarded to the Construction Manager for delivery to the Owner. Final payment and any retainage shall not be due and owing to Contractor until the Record and As-Built drawings receive the approval from the Architect and the Owner (and all other closeout requirements are met).

§ 3.11.3 The Contractor shall maintain all approved permit drawings in a manner so as to make them accessible to government inspectors and other authorized agencies having jurisdiction over the Project. All approved drawings shall be wrapped, marked and delivered to the Owner within 60 days of final completion of the Contractor's Work.

#### **PAGE 24**

§ 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. Each submittal shall bear written confirmation that the Contractor has satisfied its obligations under the Contract Documents with respect to the Contractor's review and approval of the submittal. The Contractor shall comply with the provisions and procedures for Shop Drawings, Product Data, and Samples set forth in Specifications Section 01 33 00, "Submittal Procedures."

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

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§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to (1) demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents, and (2) show a system or product's ability to meet applicable criteria 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.

§ 3.12.4.1 Shop drawings and product submittals for all site improvement, architectural, structural, mechanical, electrical and signal work shall be submitted to the Architect for its review. Refer to Contract (General, Supplementary and other conditions) Section on "SUBMITTALS" for more complete information.

**§ 3.12.4.2** The Contractor represents and warrants that all shop drawings shall be prepared by a person or entity possessing expertise and experience in the trade for which the shop drawing has been prepared and, if required by the Contract Documents or law, by a licensed professional engineer.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, with copies 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 Architect or its consultants.

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**§ 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. Resubmission of rejected documents shall be performed within 10 calendar days, or sooner if required by the progress of construction. No claim for delay or cost shall be accepted as a result of rejected submittal documents. If the Architect is required to review the Contractor's submittal more than twice, the Contractor shall bear the cost and expense associated with such additional review as set forth in the Project Manual.

**§ 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, Samples~~ or similar ~~submittals, submittals~~ unless the Contractor has specifically ~~notified-informed~~ the Construction Manager and Architect in writing 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, Samples~~ or similar ~~submittals, 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, Samples~~ or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions. Resubmission of rejected documents shall be performed within ten (10) calendar days. No claim for delay or cost shall be accepted as a result of rejected documents.

**§ 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, 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~~ Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design

criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. ~~The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.~~

**PAGE 25**

§ 3.12.11 The Architect's review of the Contractor's submittals will be limited to examination of an initial submittal and one resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Architect for evaluation of additional resubmittals.

§ 3.13.1 The Owner shall not be liable to the Contractor, subcontractors of any tier, suppliers, their employees or anyone else with respect to the condition of the Project site. The Owner shall have the right to refuse admittance to the site to any agent or employee of the Contractor, its subcontractors of any tier, or its suppliers whose presence the Owner deems hostile to the Owner's interests. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The use of the Owner's assets and property are extremely limited. The Contractor shall fully comprehend the intent of the Contract Documents pertaining to site and building limitations including, without limitation, Division 1 Specifications sections, the phased construction plan, and the site safety and logistics plan(s).

**PAGE 26**

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

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

- .1 In accordance with New York State law, smoking is prohibited anywhere on school property. Violators will be subject to arrest and/or fine of \$1,000 per occurrence. No alcoholic beverages or controlled substances are permitted on school property, and persons under the influence of alcoholic beverages or controlled substances may not enter in or remain on school property.
- .2 In accordance with the United States Gun-Free School Zones Act of 1994, no firearms are permitted within 1,000 feet of any school building, with certain limited exceptions as set forth therein. In addition to such limitations, no firearms shall be brought on school property without the Owner's express prior consent.
- .3 Appropriate protective gear (hard hats, safety shoes, goggles, etc.) are to be worn as required by OSHA standards, the New York State Department of Labor, and prudent practice. Shirts are to be worn at all times. No short pants are permitted.
- .4 Any person who uses inappropriate language, or who is disruptive to the school environment, will be banned from the site.
- .5 The Contractor's personnel shall not converse with school employees, students and or local residents.
- .6 All persons on the Project site will comply with all reasonable instructions regarding conduct and safety which are given by the Architect, the Construction Manager or the Owner's school administrators.
- .7 All construction materials shall be stored in a safe and secure manner. No deliveries will be allowed during school bus drop off or pick up hours as determined by the Owner. All deliveries shall be scheduled and coordinated with the Construction Manager and the Owner's security department. Unexpected or uncoordinated deliveries may be turned away by the Owner or the Construction Manager at the discretion or necessity of the Owner. The Owner's enforcement of this provision shall not be construed by the Contractor or Subcontractor as the basis for a claim of delay in time or monetary damages alleged to have been incurred as a result of refusal of delivery.
- .8 Use of the existing building facilities during construction is prohibited, specifically including toilet rooms, telephones and water fountains.

- .9 The Contractor's schedule shall allow for blackout dates during which no noisy Work will be allowed, as determined by the Construction Manager. The Contractor may consult the Owner's school calendar for all test and examination dates, but these dates are subject to change.
- .10 To gain access to the Work, entrances and parking areas will be designated by the Owner for the Contractor's use. Any vehicles or trucks in non-designated areas may be towed at the Contractor's expense. Gates shall always be locked unless a worker is in attendance to prevent unauthorized entry.
- .11 Should it become necessary to obtain access to the existing building during construction hours for measurements or other non-disruptive work, the Contractor shall be escorted by the Construction Manager.
- .12 All persons must wear photo identification badges at all times while working at the site. Identification badges must be provided by the Contractor for its personnel, including subcontractors, consultants, visitors and others.
- .13 No asbestos containing products are to be used anywhere on this Project.
- .14 No lead containing products are to be used anywhere on this Project.
- .15 Asbestos manifests showing the locations of all known asbestos bearing materials are available in each building, and should be consulted prior to the commencement of any work, including but not limited to demolition.
- .16 Demolition is to occur only when the building is unoccupied. Dust partitions and negative air are to be installed prior to commencing demolition. The Contractor must obtain Construction Manager approval on dust partitions and negative air prior to commencing demolition work. Debris shall be removed by using an enclosed chute or similar sealed system.
- .17 (a) Prior to the commencement of Work, the Contractor must submit construction plans, which show the location of dust particles, exhaust & fresh air fans and describe in detail the operation procedures during demolition and construction which may generate dust.
- (b) All entrances to classrooms shall be sealed with at least 6 mil. polyethylene sheeting to prevent dust created by demolition and construction work from entering the classrooms. Entrances and egress to the work zone shall be covered with a triple flap 6 mil. polyethylene doorway to allow access to the area without the release of dust. The Contractor is, additionally, responsible for all debris and dust infiltrating adjacent and undisturbed areas of the building.
- (c) Shut down and lock out all electrical and HVAC in the work area. Cut, cap, and seal all duct work where it enters the work area from another space. All duct work and conduit within the space shall be removed during demolition work.
- (d) The Contractor shall install dust protection barriers and poly sheeting. There shall be no or minimum damage to adjacent surfaces. The Contractor is responsible to repair any damage to existing surfaces.
- .18 Painting or other chemical applications shall be done in the Owner's existing building only when it is unoccupied. Storage of chemicals and painting shall be outside the Owner's existing or new structures, and shall follow manufacturer's storage guidelines.
- .19 Oxygen or other gas containers shall be properly stored and secured per OSHA requirements, to the satisfaction of the Construction Manager. Failure to do so will result in a \$250 back-charge, per occurrence.
- .20 The Contractor is responsible for cleaning its own materials and debris. Failure to maintain a clean work site daily will result in others performing the work at the Owner's request, and the Contractor will be backcharged for the cleaning cost plus construction administration fees. This may be done without the typical 3-day notice to the Contractor.
- .21 The Contractor must send a qualified representative, knowledgeable in the Project and authorized to make decisions on behalf of the Contractor, to every Project meeting.
- .22 The Contractor shall cooperate with the Owner's school principal and custodial staff; however, if any additional work is requested the Contractor shall not proceed unless written approval is received from the Owner. The Contractor will not be compensated for any additional work performed without the Owner's prior written approval.
- .23 Deliveries sent to the Project site will not be signed for or unloaded by the Owner. They will be directed to the construction site and if no employee is on site, the delivery will be rejected, at the Contractor's expense.
- .24 The General Construction Contractor shall be responsible for managing dust and dirt. On the exterior, site shall be watered down frequently to prevent dust clouds from rising. Streets shall be maintained clean per the Construction Manager's request.

- .25 All hot tar roofing shall be installed after school hours or on weekends/holidays only. Kettles shall not be lit until all students have left the Owner's building.
- .26 The Contractor shall submit a weekly work schedule indicating workdays, work hours and manpower allocation.
- .27 No storage of materials will be permitted within the Owner's buildings at any time during construction. The Contractor must provide exterior storage containers when required. The Contractor shall be responsible for securing appropriate space for its material with the Construction Manager prior to delivery. Final location of storage containers shall be determined by the Owner and/or Construction Manager. If insufficient space is available on the site, the Contractor shall provide local off-site storage, storage containers, etc. at its own cost and expense. Should any of the material stored on-site obstruct the progress of any portion of the Work or the Project, this material shall be removed by the Contractor without reimbursement of cost, from place to place or from the premises, as the Construction Manager may direct.
- .28 The General Construction Contractor shall be responsible for maintaining all appropriate site safety signage.
- .29 The Contractor shall be responsible for protecting the Owner's property. All existing shrubs, trees, lawn fixtures, sculptures and miscellaneous equipment shall be protected at all times. Any removals or relocation of said objects, if allowed shall be as directed by the Owner in writing.
- .30 The General Construction Contractor shall provide and service portable lavatories for the duration of construction as provided in the Contract Documents. Lavatories shall be serviced by the General Construction Contractor on a regular basis to maintain sanitary conditions.
- .31 The General Construction Contractor shall protect all existing roofs during construction and shall be responsible for any damage to roofs during construction. The General Construction Contractor shall make all repairs to any damaged areas, as required by the manufacturer of the roof system.
- .32 The General Construction Contractor shall be responsible for providing weather-proof protection over all rough openings, including windows.
- .33 The Contractor shall be responsible for conducting pre-construction walk-throughs and videotaping existing conditions. The Contractor shall schedule a representative of both the Owner and the Construction Manager to be present at this taping. In the absence of this record, the Contractor shall be responsible for paying the costs associated with any and all repairs in an area where the Contractor is working or has worked, as may be deemed necessary by the Owner or the Construction Manager.
- .34 Manufacturers Material Safety Data Sheets (MSDS) shall be available at the site for all products used in the Project.
- .35 No weapons are permitted on the Owner's property by law.
- .36 Neither the Contractor nor any person on its behalf shall, in any manner, engage in discrimination, intimidation or harassment of any person on the Project site.
- .37 Proper attire is required for personal safety and clothing must not sexually explicit or contain messages of a vulgar nature, disrespectful of ethnic or religious groups **or any group covered under the Dignity for All Students Act**, or which promote the use of tobacco, alcohol or drugs.
- .38 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.
- .39 The Contractor will ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work will be performed in such a manner that public areas adjacent to the site of the Work will be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor will use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work; or (2) the Owner's building in the event of partial occupancy, as more specifically described in Section 9.9.
- .40 The Contractor is required to protect its own Work and work areas, preconstruction, during construction and post construction.
- .41 During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.



- .42 The Contractor shall exert utmost care and diligence when working in or near any existing buildings or site work. The absence of protection around such items shall not excuse the Contractor from its liability to provide protection. Any damage to existing buildings, sitework or facilities due to the actions or inactions of the Contractor shall be repaired by and charged to the Contractor.
- .43 The Contractor shall be responsible for the removal and replacement of existing ceiling tiles and grid in areas of the existing building where its Work is required and new ceilings are not scheduled for installation. In the event that the existing ceilings are damaged and cannot be replaced to the satisfaction of the Owner, the responsible contractor shall be liable for the costs of replacing in kind, the existing ceilings with new tile and grid.
- .44 The General Construction Contractor shall provide necessary and required security measures to adequately safeguard the construction site from vandalism and intrusion of unauthorized persons. The General Construction Contractor shall submit its means and methods of security to the Construction Manager for review and comment. The Project site must be secured 24 hours a day, 7 days a week including holidays. The General Construction Contractor's failure to secure the site as required by this paragraph will result in the Owner engaging the services of such necessary personnel so as to provide such security. No notice will be given the General Construction Contractor of the Owner's intention to engage such security services and all costs and expenses associated with the Owner's security of the site in this regard will be back charged to the General Construction Contractor. While the Owner may have security guards patrolling the project areas, the function of such security guards is not for the purpose of specifically guarding the Contractor's property or operations of work.
- .45 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the written consent of the Owner, which may be withheld in the sole discretion of the Owner.
- .46 Without limitation of any other provision of the Contract Documents, the Contractor will comply with all reasonable rules and regulations promulgated by the Owner or Construction Manager in connection with the use and occupancy of the Project site and the buildings, as amended from time to time by the Owner or the Construction Manager.

§ 3.13.5 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.

§ 3.13.6 The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work will be performed in such a manner that public areas adjacent to the site of the Work will be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor 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 The Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories and toilets. To gain access to the Work, entrances and parking areas will be designated by the Owner for the Contractor's use. Without limitation of any other provision of the Contract Documents, the Contractor will comply with all reasonable rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Owner's building(s), as amended from time to time by the Owner.

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

§ 3.13.9 Prior to starting Work, the Contractor shall submit a written report to the Owner, Construction Manager and Architect identifying existing damage to roads, walks, lawns, buildings and other property to be affected by this Contract. Failure to submit the report shall render the Contractor responsible for existing damage. The Contractor may



request and schedule an inspection with the Owner, Construction Manager and Architect prior to submittal of the report. The Contractor shall obtain the consent of adjoining property owners regarding temporary easements of any other manner of physical encroachment.

**PAGE 30**

**§ 3.14.3** The word "new" used herein shall mean Work which has been or is to be installed under the terms of the Contract for this Project. The word "existing" used herein shall mean existing conditions previous to the award of a Contract for this Project. In order to eliminate cutting and patching as much as possible, the Contractor shall, during the progress of its Work, provide and set proper sleeves, inserts, and other fixtures as required for its new Work and shall give proper and detailed instructions to others where the 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. The Contractor shall refer to the Specifications for proper cutting and patching requirements. Any costs caused by defective or ill-timed Work of the Contractor shall be borne by the Contractor. Cutting and patching of any Work shall be made in such a manner as to not breach any provisions of any guaranty or warranty on existing work left in place or any guaranty or warranty required for the Contractor's new Work. Patching of work shall match existing adjacent surfaces and patchwork shall be disguised completely to hide any trace of patching. All new Work on existing roofs must be provided by a company specializing in performing the Work and approved by the existing roofing material manufacturer. It shall be the responsibility of the Contractor performing the cutting and patching to maintain any existing roofing warranty.

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

**§ 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. On a daily basis, the Contractor shall clean the areas in which it has performed work and shall remove all waste, materials, rubbish, its tools, construction equipment, machinery and surplus materials. 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. The Contractor shall completely clean the site of the Work, removing and disposing of all construction-related debris and rubbish, and cleaning all Work-related stains, spots, marks, dirt, mortar smears, plaster smears, paint smears, caulking smears, and other foreign materials from exposed surfaces inside and outside the Owner's buildings and within the Project limit lines.

**§ 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. At its option, the Owner may deduct the cost of clean-up pursuant to this Section 3.15.2 from any payments otherwise due to the Contractor pursuant to this Contract.

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

...

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall, and cause its Subcontractors to, defend, indemnify and hold harmless the Owner, Construction Manager, Architect, ~~Construction Manager's and Architect's consultants, and~~ and their consultants, officers, directors, board members, agents and employees of any of them (collectively, "Indemnitees," individually, "Indemnitee") from and against all losses, damages, liabilities, actions, causes of action, claims, demands, fines, penalties, judgments, costs (including but not limited to attorneys' fees and expenses incurred in connection therewith and in the enforcement of this indemnification), charges, expenses and demands of whatever kind in connection with or arising from or out of (a) any negligent, willful or wrongful act or omission resulting in bodily injury (including death), personal injury or property damage (including loss of use) by the Contractor, its Subcontractors, Suppliers, their respective officers, employees, servants, agents, suppliers, invitees, successors and assigns (collectively, "Contractor Parties," and individually, "Contractor Party"), (b) performance of or

failure to perform the Work or any breach of this Contract or infringement of any patent right by any Contractor Party, or (c) any statutorily imposed liability for injury to employees or failure to comply with any laws or regulations affecting the Work, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Nothing contained herein shall be construed to obligate the Contractor to indemnify, defend, and hold an Indemnitee harmless for claims caused solely by the Indemnitee's negligent acts or omissions.

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

PAGE 31

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

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

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

**§ 3.18.6 Intellectual Property.** The Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against any claim or demand for patent fees, royalties, or otherwise on account of any invention, machine, article, process, copyright, or arrangement that may be used by the Contractor in performing the Work, other than as to any of the foregoing expressly called for in the Contract Documents to be so used. In the event of any injunction or legal action regarding such claim or demand that results in stopping the Work in whole or part, the Owner shall have the right to direct the Contractor to change the manner of performance of the Work to avoid such stoppage, all cost and expense occasioned thereby to be borne solely by the Contractor.

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

**§ 3.18.8** Subject to Section 3.18.9, all obligations of the Contractor under this Section 3.18 to defend the Indemnitees are obligations to provide full defenses at the sole cost and expense of the Contractor, regardless of any alleged culpability on the part of any Indemnatee or any ultimate determination of relative shares of liability of any Indemnatee or limitation of the Contractor's indemnity obligations in light of such determination.

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

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

### **§ 3.19 Existing Features and Underground Data**

**§ 3.19.1** The location of existing features shown on plans is intended for general information only. The Contractor, alone, is responsible for accurate determination of the location of all structures, and shall not be entitled to any increase in the Contract Sum or Contract Time due to difficulties or distances encountered in the Work, which should have been foreseeable thereby.

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

### **§ 3.20 Construction Stresses**

**§ 3.20.1** 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, at its own expense, take whatever steps necessary to strengthen, relocate, or rebuild the structure to meet all applicable requirements.

**§ 3.20.2** The Contractor is responsible for restoration or repair of utilities, private property, buildings, pavement, walkways, roads, or other property damaged by its activities under this Agreement.

### **§ 3.21 Training and Instructions**

**§ 3.21.1** Upon Substantial Completion of the Work, the Contractor shall orient and instruct personnel of the Owner designated by it 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.

## **PAGE 33**

**§ 4.1.1.1** Architect's Consultants: All firms listed on the title sheet of the Specifications, except for the Owner and Construction Manager, are Consultants employed by the Architect, and are agents of the Architect and will make observation of their respective branches of the Work. All changes in the Work must be processed through the Architect. Consultants shall not order extra Work or make changes in the Work.

**§ 4.1.3** Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Consent shall not be unreasonably withheld. The Architect is the interpreter of the technical requirements of the Drawings and Specifications with regard to questions the Contractor may have concerning its obligations under either. The Architect shall render such interpretations with such promptness as necessary to maintain progress of the Work.

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§ 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~~. Payment and during the correction period described in Article 12. The Construction Manager and Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

...

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project ~~schedule~~. Schedule. The Contractor shall participate with other Contractors and the Construction Manager, the Architect and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary by the Owner or Construction Manager. The approved construction schedules shall be integrated into the Project Schedule and constitute the schedules to be used by the Contractor, other Contractors, the Architect, the Construction Manager and the Owner until subsequently revised.

§ 4.2.4.1 The Contractor shall assume full responsibility for the execution of its Work in the allotted duration times set forth in the Project Schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, ~~or charge of, or responsibility for,~~ the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge ~~of, or~~ be responsible for acts or omissions ~~of, or~~ 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~~ **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Architect 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 material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager. Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. 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. The Construction Manager will assemble each of the Contractor's Applications for Payment with similar applications from other Prime Contractors into a Project Application and Certificate for Payment, all of which will be submitted to the Architect with the Construction Manager's recommendations as to certifications in whole or part by the Architect.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract ~~Documents,~~ Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require

additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not the such 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, material and equipment 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. The Construction Manager will receive and promptly transmit to the Architect all submittals from the Contractor such as Shop Drawings, Product Data and Samples. 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.~~

**§ 4.2.10** ~~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 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 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, 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.~~

**§ 4.2.11** ~~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. Review of the Contractor's submittals by the 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 Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.~~

**§ 4.2.11.1** ~~The Architect's review of Contractor's submittals shall be limited to an initial submittal and one (1) resubmittal. If the Architect is required to review additional submittals because the initial submittal and resubmittal failed to conform to the information given and the design concept expressed in the Contract Documents, the amount of compensation paid to the Architect by the Owner for additional services shall be deducted from the payments to the Contractor.~~

**§ 4.2.11.2** ~~The review will not be considered complete until an "ACTION" stamp or other written notice to that effect has been received by the Contractor.~~

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

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

**§ 4.2.14** 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. 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.

**§ 4.2.15** 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. The Construction Manager will assist the Architect in conducting inspections to determine the 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.

**§ 4.2.16** 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 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in 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. 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.

§ 4.2.18 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. 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.

§ 4.2.18.1 If Work is described or indicated in a manner which makes it impossible to carry out the requirements of the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request interpretation before proceeding with the Work. If the Contractor fails to make such a request, no excuse will be entertained for failure to carry out the Work of the Contract Documents. Should a conflict occur in or between Contract Documents, the Contractor is deemed to have included in the Contract Sum the more expensive manner of doing the Work.

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

§ 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. 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 to 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.

§ 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.

## PAGE 36

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable Documents or the bidding requirements, the Contractor, within ten (10) days after award of the Contract, shall notify the Construction Manager, furnish in writing to 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 Architect the names of persons or entities (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 design) proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager to provide notice Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.1.1 In no case shall payments be made on the Contract until a complete list of Subcontractors has been submitted by the Contractor to the Construction Manager for review by the Owner, Construction Manager, and Architect. Such list shall not be considered complete if the Owner, Construction Manager or Architect has any reasonable objection to any name listed thereon. Such list shall be submitted and resubmitted if necessary until it is considered complete.



§ 5.2.1.2 Subcontractors will not be acceptable unless, when requested by the Owner, Architect or Construction Manager, evidence is furnished by the Contractor that the proposed Subcontractor has satisfactorily completed similar subcontracts as contemplated under this Contract, and has the necessary experience, personnel, equipment, plant and financial ability to complete the proposed subcontract in accordance with the intent of the Contract Documents and the Project Schedule. As verification of financial ability, the Owner reserves the right to request and receive up to five (5) years of financial statements, bank references, bond/insurance company references and all other information required to assess financial ability.

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§ 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, and Architect have no objection.

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§ 5.2.5 The Maintenance of the Project Schedule is critical. The Contractor shall award subcontracts to entities capable of performing in a manner that will maintain the Project Schedule and require its subcontractors to complete their work in accordance with the Project Schedule.

§ 5.2.6 Upon written request from or on behalf of the Owner, the Contractor shall provide to the Owner executed, unredacted copies of all subcontracts, purchase orders or other agreements relating to the Work.

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 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 responsibility for safety of the Subcontractor's Work, which the Contractor, by these 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. Each subcontract shall contain provision for execution of lien waivers in form and substance acceptable to the Owner as a condition of payment by the Contractor. The



Contractor shall require each Subcontractor to (1) inspect the Project site, including all relevant surfaces and job conditions, before beginning the Work and (2) accept or cite necessary corrections in the Project site, including surfaces or job conditions, before beginning the Work.

§ 5.3.2 The Contractor shall promptly notify the Owner and Architect of any material defaults by any Subcontractor or whether it has terminated its agreement with any of its Subcontractors for any reason.

**PAGE 37**

- .1 assignment is effective only after termination of the Contract by the Owner ~~for cause pursuant to Section 14.2 pursuant to Article 14 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and~~

...

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, 60 days, through no fault of the Subcontractor, 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.

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§ 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 which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.

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

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors recognizes and acknowledges that the Project is governed by and subject to the provisions of New York State General Municipal Law §101, et seq., governing the award of contracts on public improvement projects. As such, the Contractor recognizes and acknowledges that other Contractors or Separate Contractors will be performing work on the project in conjunction with it. As such, the Contractor shall afford the Owner's own forces and other Contractors or Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.1.1 The Contractor shall not commit or permit any act which will interfere with the performance of the work of any other Contractor or Separate Contractor performing work on the Project. If the Contractor sustains any damage through any act or omission of Separate or other Contractors having a contract with the Owner for the performance of work upon the site or of work which may be necessary to be performed for the proper execution of the work to be performed hereunder, or through any act or omission of a subcontractor of such Separate or other Contractor, the Contractor shall promptly notify the Owner and the Construction Manager of such damage

§ 6.2.1.2 The Contractor agrees to defend and indemnify Owner, Architect, Construction Manager, Consultants and Sub-consultants, from all claims made against any of them arising out of the Contractor's acts or omissions or the acts or omissions of any Subcontractor of the Contractor which have caused damage to the Owner, Architect, Construction Manager, Separate Contractor or other Contractor on the Project. The Owner's right to indemnification hereunder shall in no way be diminished, waived or discharged, or by the exercise of any other remedy provided for by the contract or by law. Further, the Owner shall withhold from the Contractor's Contract Sum an amount sufficient to cover such damage and all expenses and costs associated with the damage sustained.

**PAGE 38**

§ 6.2.2.1 The Contractor shall promptly correct discrepancies or defects in its Work identified by Separate Contractors as affecting proper execution and results of the work of the Separate Contractors.

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

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5-10.2.5 or elsewhere in the Contract Documents.

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§ 6.2.6 Should the Contractor or its Subcontractors cause damage to the work or property of any Separate Contractor or other Multiple Prime Contractor, the Contractor shall, upon due notice, promptly attempt to settle by agreement or otherwise resolve the dispute with the Separate Contractor or other Multiple Prime Contractor. If such separate trade contractor or other Multiple Prime Contractor sues or makes any other claim against the Owner, Construction Manager, or Architect on account of any damage alleged to have been caused by the Contractor or its Subcontractors, the Contractor shall defend, indemnify, and hold harmless the Owner, Construction Manager, and Architect against such claim or proceedings at the Contractor's own expense. The Owner's right to indemnification hereunder shall in no way be diminished, waived or discharged, or by the exercise of any other remedy provided for by the Contract Documents or by law. Further, the Owner shall be entitled to withhold from the Contractor's Contract Sum an amount sufficient to cover such damage and all expenses and costs associated with the damage sustained.

§ 6.2.7 When the Work of the Contractor or its Subcontractors overlap or dovetail with that of other Contractors, materials shall be delivered and operations conducted to carry on the Work continuously, in an efficient, workmanlike manner.

§ 6.2.8 In case of interference between the operations of the Contractor and other Contractors, the Construction Manager will be the sole judge of the rights of each contractor and shall have the authority to decide in what manner the Work may proceed, and in all cases its decision shall be final. Any decision as to the method and times of conducting the Work or the use of space as required in this paragraph shall not be basis of any claim for delay or damages by the Contractor.

§ 6.2.9 The Contractor, including its Subcontractors, shall keep itself informed of the progress of other Contractors and shall notify the Architect or the Construction Manager immediately in writing of lack of progress on the part of other Contractors where such delay will interfere with its own operations. Failure of the Contractor to keep informed of the work progressing on the Project and failure to give notice of lack of progress by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's Work.

§ 6.2.10 Delays or oversights on the part of the Contractor or its Subcontractors in getting any or all of the Work done in the proper way, thereby causing cutting, removing and replacing Work already in place, shall not be the basis for a claim for extra compensation or additional time.

§ 6.2.11 The Contractor shall promptly correct discrepancies or defects in its Work which have been identified by Separate Contractor(s) or other Contractor(s) as affecting proper execution and results of the work of such other Contractor(s).

PAGE 39

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order, Construction Change Directive or field order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Owner may in its sole discretion reduce the scope of the Contractor's Contract with or without any specific reasons therefor.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A 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. A Contractor; a field order for a minor change in the Work may be issued by the Architect alone.

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

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

§ 7.1.4 Costs for changes in the Work shall not be allowed in excess of usual rentals charged in the area where the Project is located for similar equipment of like size and condition, including costs of necessary supplies and repairs for operating equipment on site in connection with other work unless its use incurs actual and additional costs to Contractor. If equipment not on Site is required for change in work only, cost of transporting equipment to and from Site will be allowed.

§ 7.1.5 When the Owner or Architect (in association with the Construction Manager) request that the Contractor perform work which is not included in the Contract Drawings or Specifications and which will result in additional cost to the Owner, the Architect shall request that the Contractor submit its proposal for performing such additional work. The Contractor shall submit its proposal to the Construction Manager and Architect for review. The Contractor's proposal shall include a complete itemization of the costs associated with performing its work including labor and materials. All proposals for any work that a Contractor, its Subcontractor(s) or Sub-subcontractor(s) perform in connection with additional work shall be properly itemized and supported by sufficient substantiating data, including but not limited to material descriptions, material quantities, material unit prices, labor trade listings, labor hour quantities, labor trade rates, equipment descriptions and equipment rates with a percentage allowance for overhead and profit as set forth in Section 7.3.11.

§ 7.1.6 Overtime, when specifically authorized by the Owner in writing, and not as a corrective measure by the Contractor to expedite the progress of construction as ordered by the Owner based on its determination that the performance of the Work has not progressed to the level of completion required by the approved Schedule, shall be

paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

**§ 7.1.7** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.4. The allowable overhead and profit mark-up shall include, but not be limited to, the following:

- .1 home office expense;
- .2 field office expense;
- .3 supervision;
- .4 project management & estimation; and
- .5 small tools & equipment.

**§ 7.1.8** Unit prices shall be submitted in the Bid Form for various items as set forth therein, and are subject to approval and acceptance by the Owner. The Owner reserves the right to reject any unit price which is unreasonable or unbalanced, as compared with prevailing costs, or as compared with the unit prices submitted by other bidders for the Project. Approved unit prices quoted shall include all profit, overhead, bonds, insurance, labor, materials, equipment, tools, applicable taxes necessary to complete the work item and shall apply to all work added or work deducted.

**PAGE 40**

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

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

...

- .3 The extent of the adjustment, if any, in the Contract Time.

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

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

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

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

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

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

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

**§ 7.3.2.1** If the Owner and the Contractor cannot agree that the requested Work properly forms the basis for a Change Order or on the sum by which the Contract is to be increased or reduced based upon changes to the scope of Work, the Architect or Construction Manager shall issue a Construction Change Directive signed by the Owner, Construction Manager and Architect reflecting the addition to, or removal of, the scope of Work and the Contractor shall (a) in the case of additional work to be performed by the Contractor, perform such additional work in an expeditious manner so as not to delay the Work of the Contractor or other Contractors working at the site and keep records of its performance of such additional work, and (b) in the case of work to be removed from the scope of the Contractor's Work, refrain from taking any steps in connection with the work associated with the deduction of the Contractor's Work. The Construction Change Directive shall include: (a) a description of the work being added or removed from the Contractor's scope of Work; (b) the amount the Owner has determined to be the cost associated with the additional work (as those costs are identified and limited in Section 7.3.4) or removal of the scope of the Contractor's Contract until the Owner and the Contractor agree upon the increase or decrease in the Contractor's Contract Sum, or until a claim filed by the Contractor has been determined; and (c) the extent to which the Contract Time will be adjusted as a result of the change in the scope of Work. Any claims must be filed in accordance with the requirements set forth in Article 15 of these General Conditions. Failure to timely file any claim in accordance with requirements set forth therein shall constitute a waiver of such claim.

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

## PAGE 42

- .2 Unit prices stated in the Contract Documents or subsequently agreed upon; upon (unit prices shall be deemed to include all costs and expenses for the Contractor's changed Work, including costs of general conditions, insurance/bonds and overhead and profit attributable to the change);
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; fee subject to the limitations of Section 7.3.11; or
- .4 As provided in Section 7.3.4; 7.3.4 subject to the limitations of Section 7.3.11.

**§ 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. Section 7.3.11. In such case, and also under Section 7.3.3.3, 7.3.11, 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, Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect; and workers compensation insurance;~~
- .2 ~~Costs~~ Actual costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 ~~Rental~~ Actual rental costs of machinery and equipment, exclusive of hand tools, ~~whether rented from the Contractor or others; rented from third parties; and~~
- .4 ~~Costs~~ Actual 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; use or similar taxes related to the additional work.~~

...

**§ 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 (1) the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time or Contract Time or (2) the amount of the increase or decrease in the Contract Sum and Contract Time as provided in Section 7.3.2.1. Any claims must be filed in accordance with the requirements set forth in Article 15 of these General Conditions. Failure to timely file any claim in accordance with requirements set forth therein shall constitute a waiver of such claim.

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**§ 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 the Owner or Architect request that portions of the Contractor's Work originally included in the Drawings or Specifications be deleted and which will result in a reduction of the Contract Sum, the Architect shall request that the Contractor submit its proposal for deleting the scope of such Work from the Contract. The Contractor's proposal shall include a complete itemization of the costs associated with deducting such Work including labor, materials, overhead and profit. The Contractor shall not be entitled to retain its overhead or profit for such work nor shall any of its Subcontractors which were to perform the work being deducted from the Contractor's scope of Work. Additionally, the Contractor shall reflect the reduced cost of premiums on bonds which are to be supplied herein as a result of such change. 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.~~

**PAGE 43**

**§ 7.3.11** The limit for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, fifteen percent (15%) of the direct cost for labor and materials.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, maximum of five percent (5%) of the amount due the Subcontractor for the Contractor's overhead and profit. For the Subcontractor, for Work performed by the Subcontractor's own forces, ten percent (10%) of the direct cost for labor and materials. The total combined overhead and profit for a change order shall be limited to 15% of the direct cost regardless if the Work is performed by the Contractor or the Subcontractor.
- .3 The markup on any part of the Work a Subcontractor subcontracts will be limited to one overhead and profit figure, in addition to the Contractor's overhead and profit markup. The Subcontractor and Sub-subcontractor may divide the overhead and profit amount as they agree upon.
- .4 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7.
- .5 In order to facilitate checking of quotations for extras and credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and subcontracts. Labor and material shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also.
- .6 Overhead and profit mark-up shall include, but not be limited to, the following:
  - .1 home office expense;
  - .2 field office expense;
  - .3 supervision;
  - .4 project management & estimation;
  - .5 small tools & equipment;
  - .6 research & layout;
  - .7 inspections & permits;
  - .8 material handling;
  - .9 record drawings; and
  - .10 safety and cleanup

...

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

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

**PAGE 44**

§ 8.1.5 Work remaining to be completed after Substantial Completion, shall be limited to items which can ordinarily be completed within a thirty (30) day period (one month) before final payment is made.

...

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

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

§ 8.2.4 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 (including the equitable value of the changes), or any disputes or disagreements as to the Work or extra work.

§ 8.2.5 If the Contractor does not achieve the completion date and milestone date for each work item in the Contract, a milestone or critical path date reflected on the Project Schedule, or the date of Substantial Completion for the Work or any part thereof, the Contractor shall be responsible for all direct and consequential damages to Owner arising from any delay of the Contractor, its Sub-Contractors, Sub-subcontractors, and suppliers, in performing or completing the Work in accordance with the time requirements of the Contract, by way of example but not as a limitation: (i) additional architectural and construction management fees related to extended services; (ii) additional project management costs; (iii) financing costs (including delayed or lost State Building Aid); (vi) temporary storage and dislocation costs; and (v) costs related to the disruption or relocation of the Owner's personnel, academic and other departments, including equipment and machinery, affected by the Owner's inability to timely occupy the Project facilities. The Owner shall have the right to deduct the amount of the foregoing damages from any payment then due or thereafter becoming due from the Owner to the Contractor. If the Contract Sum is exhausted, the Contractor shall pay such amounts to the Owner on demand.

§ 8.2.6 In the event the Contractor fails to complete all Work under this Contract by said scheduled dates, the Contractor will not be permitted to perform any work during normal school hours without the express written authorization of the Owner. Such Work shall only be performed after school hours, Saturdays, Sundays, holidays or periods when school is unoccupied at no additional cost of any kind to the Owner. In addition to damages incurred by the Owner in connection with the Contractor's delay, the Contractor shall be liable for all costs incurred by the Owner to provide staff, Architect and Construction Manager personnel as required to make facility accessible by Contractor and perform inspections during such off hours.

§ 8.2.7 The Contractor understands that in order to meet the requirements of the Project schedule, including intermittent milestone and critical path dates set forth in the Contract Documents, it may be required to work its



personnel and equipment overtime on regular work days and on Saturdays and holidays, the cost of which is included in the Contract Sum. If the Owner specifically approves in writing reimbursement for overtime, the Contractor shall be paid by the Owner on the basis of the premium payment.

**§ 8.2.8** The Owner shall have the right at any time to modify the Project Schedule; to suspend, delay or accelerate, in whole or in part, the commencement or execution of the Work or any portion thereof or to vary the sequence thereof; and to prescribe the time, order and priority of the various portions of the Work, and all other matters relating to the scheduling of the Work. The Contractor shall not be entitled to additional compensation for any such decisions made by the Owner.

**PAGE 45**

**§ 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 as a result of: Acts of God (such as tornado, flood, hurricane, pandemics [see exception below], epidemics, etc. making performance temporarily impossible); the negligent acts or omissions 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. Other Contractors, or their agents or employees; strikes, lockouts or other labor disturbances (not arising from the labor practices of Contractor or its Subcontractors, Suppliers, or Sub-subcontractors to comply with their obligations arising under the Contract); unusually adverse weather conditions; freight embargoes (provided that delays by the Contractor, its Subcontractors, Sub-subcontractors or Suppliers do not constitute an excusable cause of delay); changes in the work to be performed by the Contractor (not caused or resulting from the failure of the Contractor or its Subcontractors, Suppliers or Sub-subcontractors); or changes to laws or regulations after the effective date of the Contract, provided the Contractor has used all reasonable efforts to mitigate the foregoing causes; then the Contractor shall be entitled to a day for day extension of the Contract Time for the established delay to the critical path of the Work subject to the provisions of this Article 8 and Article 15. All other delays of the Project, including but not limited to, Architect review and/or approval of shop drawings or other submittals, requests for information, clarifications, samples, and change orders; Owner schedule; Architect certification of payment; payment by Owner of Contractor's Application for Payment; coordination among the Multiple Prime Contractors; unavailability of materials and/or equipment; surveying/testing; closeout, etc. are deemed to be foreseeable and contemplated and, therefore, shall not form the basis for a claim for an extension of time or additional compensation by the Contractor. **Conditions caused by the COVID-19 pandemic or epidemic, or any variants of the disease, shall not form the basis of an excuse under this section. No additional time or compensation shall be provided to the Contractor for COVID-19 or any variant.**

**§ 8.3.1.1** The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused or could not have been anticipated by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (3) is of a duration of more than one (1) day.

**§ 8.3.1.2** The Contractor's inability to secure sufficient personnel for the performance of the Work shall not constitute a basis for an extension of time. The Contractor shall not be entitled to an extension of time if the Architect or Construction Manager stops the Work due to the existence of or reasonable suspicion of a deficiency in the Work.

**§ 8.3.1.3** An extension of the Contract Time, if requested by the Contractor, shall only be considered after the Contractor has made reasonable effort to recover the lost time. An extension, or extensions, of time may be granted subject to the provisions of this Article 8, but only after written application therefore by the Contractor. An extension of time shall be only for the number of days of delay which the Architect may determine to be due solely to the causes set forth in the application 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 or Architect.

**§ 8.3.1.4** All requests for additional time shall be made in writing, delivered to the Construction Manager within five (5) days from the time when the circumstance with potential for delay becomes reasonably known to the Contractor,



supported by documentation which demonstrates to the Architect and Construction Manager's satisfaction that the critical path of the Work has been significantly altered by the delays to the activities in question, and that the Project schedule cannot be maintained by re-ordering other activities within the Project at no cost. This request shall also contain, at a minimum, the following information: (1) date of start of delay; (2) specific cause of delay; (3) effect of delay on construction progress; and (4) date of termination of delay. Upon receipt of the Contractor's request for an extension of time, the Owner will ascertain the facts and extent of the delay, and may, in its sole discretion, extend the time for completion of the Contractor's Work when in its judgment such an extension is justified. The Owner's determination will be final and binding in any litigation commenced by the Contractor against the Owner which arises out of the Owner's denial of an extension of time to the Contractor. Any approval of an extension of the Contractor's time to complete its Work shall be memorialized by written change order, signed by the Owner, Contractor, Architect and Construction Manager. When the Owner determines that the Contractor will be granted an extension of time, such extension shall be computed in accordance with the following: for each day of delay in the completion of its Work, the Contractor shall be allowed one day of additional time to complete its Contract. The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently; rather, only the actual period of delay as determined by the Owner or its Architect may be allowed.

**§ 8.3.1.5** Failure of the Contractor to give written notice as required by Section 8.3.1.4 or to strictly comply with the requirements of Article 8 shall be deemed conclusively to be a waiver and release of such claim, and such notice shall be a condition precedent to the Contractor's right to make a claim for any claim arising out of, under or in connection with the Contractor or the performance of the Work.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted and justified under Section 8.3.1, shall be the sole remedy of the Contractor for, and the Contractor waives its right to any claim for damages to the extent arising from, any (1) delay in the commencement, prosecution, or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity or acceleration; or (4) other claims for disruption, interference, inefficiencies, impedance, hindrance, acceleration, resequencing, schedule impacts, lack of timeliness by the Owner or its consultants, and lack of coordination, errors or omissions in the design of the Project, cumulative impact of multiple change orders, delay and other impacts (collective referred to herein as "Delay(s)"). In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any Delay, including, but not limited to, delay costs, loss of productivity or efficiency, lost profits, extended jobsite general conditions and home office overhead, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, but not limited to, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as interference, hindrance or obstruction with the Contractor's performance of the Work and shall not entitle the Contractor to any additional compensation. The Contractor shall include a no-damages-for-delay clause in all subcontracts for the performance of the Work.

**§ 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. Delays that affect the scheduled completion of the Work and are attributable to interference between Multiple Prime Contractors, Separate Contractors, Subcontractors, suppliers, utility companies or municipalities, shall be compensated solely by the granting of an extension of time to the Contractor by the Owner to complete the Work without charges to the Owner. The parties acknowledge that the Contract Time takes into account the time necessary for review of shop drawings, design errors or omissions, coordination amongst Contractors, change orders, delays incurred by seasonal limitations and other administrative processing by all parties involved and are not compensatory. The Contractor agrees that it has included in its Bid prices the additional cost of doing work under this Contract caused by interference of other Prime Contractors, Separate Contractors, Subcontractors, etc. and the other non-compensatory Delays described above.

**§ 8.3.4** When the Contract Time has been extended, as provided under Section 8.3, such extension of time shall not be considered as justifying extra compensation to the Contractor for administrative costs, home office, estimating, extended general conditions or other similar impact costs. The Contractor acknowledges that in agreeing to the Contract Sum it assessed the potential impact of the limitations in Section 8.3.2 on its ability to recover additional compensation in connection with a Work delay, interference, impact or hindrance and agrees that those limitations shall apply regardless of the accuracy of the Contractor's assessment or actual costs incurred by the Contractor.

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

§ 8.3.6 The intent of the Contract is for Work to follow a logical sequence. The Contractor, however, may be required by the Owner, Construction Manager or Architect to temporarily omit or leave out any section of Work or perform Work out of sequence. Out of sequence work and come back time to these areas shall be performed at no additional cost to the Owner.

§ 8.3.7 Claims relating to Contract Time shall be made in accordance with applicable provisions of Article 15.

#### **§ 8.4 LIQUIDATED DAMAGES**

§ 8.4.1 Contractor realizes that time is of the essence on this Contract and the Construction Schedule shall be submitted per Sections included herein. In the event the Contractor fails to submit a Construction Schedule by said date, the sum per calendar day of (\$1000) ONE THOUSAND DOLLARS will be subtracted from the Contract Sum due the Contractor in the form of a change order.

§ 8.4.2 Contractor realizes that time is of the essence on this Contract and the completion date for any work or the date of Substantial Completion shall be no later than the date indicated in these Contract Documents. The Contractor understands that the substantial disruption of the School District's educational process will occur if the project is not completed by the dates outlined in Division 1 of the specifications. In the event that the Contractor fails to complete any work or substantially complete the work under the Contract by said schedule, the sum per calendar day of (\$1,000) ONE THOUSAND DOLLARS will be deducted from the Contract Sum due the Contractor in the form of a change order, except in cases where a delay is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including acts of God, or of the Public enemy, acts of the government, in either sovereign or contractual capacity, fires, floods, epidemics, **(except COVID-19 or its variants)** quarantine restrictions **(except from COVID-19 or its variants)**, freight embargos, or delays of Subcontractors or suppliers due to such causes. Delays in acquisition of materials other than by reason of freight embargoes will not constitute a delay excusable under this provisions unless approved by the Owner in writing.

Within five (5) calendar days from the occurrence of any such delay, the Contractor shall notify the Owner in writing the cause of delay. The Owner will ascertain the facts and extent of the delay, and extend the time for completing the Work when in his judgment the findings of fact justify such an extension. Owner's findings of fact will be final and binding on any litigation.

The said sum per calendar day shall constitute the Liquidated Damages incurred by the Owner for each day of the delay beyond the agreed upon dates. Such Liquidated Damages shall be in addition to any other damages (other than by reason of delay) Owner may incur as a result of Contractor's breach of Contract.

In the event the Contractor fails to complete all work under this Contract by said scheduled dates, the Contractor will not be permitted to perform any work during the normal school hours. Such work shall only be performed after school hours, Saturdays, Sundays, holidays or periods when school is unoccupied at no additional cost of any kind to the Owner. In addition to Liquidated Damages, the Contractor shall be liable for all additional costs incurred by the Owner to provide staff, Architect, and Owner's Representative personnel as required to make facility accessible by Contractor and perform inspections during such off hours. In the event that the completion dates are not met, inspections will be performed once each week unless, the Owner or the Architect determine, at their sole discretion, that additional inspections are needed.

All costs incurred by the Owner, Owner's Representative, Architect, Architect's consultants, for the cost of additional inspections, at the rate of (\$800) EIGHT HUNDRED DOLLARS per inspection or more due to time requirements, will be subtracted from payment due the Contractor. If the amount due the Contractor for payment is insufficient, any deficiency shall be paid by the Contractor to the Owner. Additionally, a cost of \$750 per day for extended Construction Management time will be charged to the Contractor causing the delay.

**PAGE 47**

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

**PAGE 48**

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** Within 30 days of Contract Award, the Contractor shall submit to the Construction Manager a schedule of values allocated to various portions of the Work for each building, prepared in the currently authorized form of AIA Document G703 – Continuation Sheet and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. 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 schedule of values shall state the names of all Subcontractors, Sub-subcontractors and material suppliers and the amounts to become due to each breakdown by specification section. The schedule of values shall contain, along with individual work items, separate line items for (1) mobilization, bonds, insurance, etc., (2) value of administrative close out submittals, (3) Allowance(s) if required elsewhere in the Project Manual, (4) separate subtotals by building, and (5) buildings further separated between "Additions/New Construction" and "Renovations/Reconstruction" as applicable. At the direction of the Architect, it shall include quantities, if applicable. The total for all items shall aggregate the Contract Sum.

**§ 9.2.2** Any schedule of values that fails to include sufficient detail, is unbalanced or exhibits "front loading" of the value of the Contractor's Work will be rejected. Furthermore, if the schedule of values has been approved by the Construction Manager and the Architect and is subsequently used, but later is found by the Construction Manager or Architect to be improper for any reason, sufficient funds shall be withheld from the Contractor's future applications for payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Contractor's Work.

**§ 9.2.3** The schedule of values shall be drafted so as to reflect multiple construction sites, multiple locations within each site, additions versus renovations of work, and the like so as to satisfy any New York State Education Department requirements for the Project.

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**§ 9.3.1** ~~At least fifteen days before the date established for each progress payment, In accordance with Article 5 of the Agreement and the Payment Procedures in the Specifications, the Contractor shall submit to the Construction Manager-Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that notarized and reflecting retainage as provided elsewhere in the Contract Documents. Applications for Payment will be in the currently authorized form of AIA Document G732 - 2019, "Application and Certificate for Payment," accompanied by AIA Document G703-1992, "Continuation Sheet," and must include (add and/or deduct) adjustments to the Contract Sum resulting from Work performed under approved Change Orders (specified under Article 7) and shall be shown separately on the application for previous and current periods. Each Application and Certificate of Payment shall be accompanied by two (2) copies of the Pay Application Lien Waiver and Release in the form set forth in the Payment Procedures in the Specifications. Each Application for Payment shall be prepared in such form and supported by such data to substantiate the Contractor's right to payments as 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 may require such as copies of requisitions from Subcontractor and material suppliers.~~

Each Application for Payment forwarded to the Owner by the Construction Manager or Architect shall be subject to audit and approval by the Owner in accordance with the Owner's normal audit.

§ 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. The Construction Manager and Architect shall review the application for payment submitted by the Contractor and shall advise the Contractor of any adjustments to be made thereto. The Construction Manager and/or the Architect may make such adjustments under the circumstances set forth in Section 9.5.1. If any such adjustments are made by the Architect or Construction Manager, the Contractor shall submit an original itemized revised application with all documentation required by Section 9.3.1.

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

§ 9.3.1.3 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 material supplier unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.4 Until Substantial Completion, the Owner shall pay ninety-five percent (95%) of the amount due the Contractor on account of progress payments, less an amount necessary to satisfy any claims, liens, or judgments against Contractor, which have not been suitably discharged. In accordance with Section 9.8.5, the Owner shall pay the entire amount retained from previous progress payments less two (2) times the amount required to complete items identified in a list prepared in accordance with Section 9.8.2 and the amount required to satisfy any outstanding claims, liens, or judgments against the Contractor.

§ 9.3.1.5 The Contractor and its Subcontractors are required to submit certified payroll information to the Owner in accordance with New York State Law.

§ 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 Project site for subsequent incorporation in the Work. If approved in advance in writing 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 interest. The costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site to the site for such materials and equipment stored off the site shall not increase the Contract Sum.

§ 9.3.2.1 Payment may be made for materials and equipment delivered and suitably stored on-site for future incorporation in the Work, subject to the following conditions:

- .1 Request for payment shall be considered for material or equipment, which is in short or critical supply, which has been specially fabricated for the Project or, at the discretion of the Construction Manager and Architect, for other materials or equipment.
- .2 A request for payment of material stored on-site must be made by the Contractor ten (10) days prior to actual, monthly cut-off date for Payment Applications.
- .3 Procedures required by the Owner shall include, but 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, provisions of opportunity for the Construction Manager's and Architect's visual verification that such materials and equipment are in fact in storage; and, if stored off-site, submission by the Contractor of verification that such materials and equipment are stored in a bonded warehouse.
- .4 All such materials and equipment, including materials and equipment stored on-site but not yet incorporated into the Work, upon which partial payments have been made shall become the property of the Owner, but the care and protection of such materials and equipment shall remain the responsibility of the Contractor until incorporation into the Work and accepted by the Owner at substantial

completion, including maintaining insurance coverage on a replacement cost basis without voluntary deductible.

**§ 9.3.2.2** Payment may be made for materials and equipment delivered and suitably stored off-site for future incorporation in the Work, subject to the following conditions:

- .1 The Contractor shall submit: a written validation by the Owner, Construction Manager or Architect that such materials are stored safely off site, in the quantities and condition stated by the Contractor; a copy of an invoice for the material and equipment; a bill of sale or equivalent indication of the quantity and value of the material or equipment; a written statement indicating the location and method of storage; and property insurance certificate or rider covering the specific material or equipment, which shall name the Owner as an additional insured party.
- .2 The Contractor shall submit a verification that such materials and equipment are stored in a bonded warehouse.
- .3 A request for payment of material stored off-site must be made by the Contractor 10 days prior to actual, monthly cut-off date for Payment Applications.
- .4 All such materials and equipment upon which partial payments have been made shall become the property of the Owner, but the care and protection of such materials and equipment shall remain the responsibility of the contractor until incorporation into the Work and accepted by the Owner at substantial completion, including maintaining insurance coverage on a replacement cost basis without voluntary deductible.

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

**§ 9.3.4** The Contractor further expressly undertakes to defend the Indemnitees (as defined previously in Section 3.18), at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Indemnitees as a result of liens filed against the Owner, the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor or any portion of the property of any of the Indemnities (referred to collectively as liens in this Section 9.3.4). The Contractor hereby agrees to defend, indemnify, and hold Indemnitees 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.

**§ 9.3.5** 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 an amount not less than One Hundred Fifty percent (150%) of such lien claim. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3, including, without limitation, the duty to defend and indemnify the Indemnities in an action on the lien, lien discharge bond or underlying debt. 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.

**PAGE 50**

**§ 9.4.1** Where there is only one Contractor, the The Construction Manager will, within seven (7) 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 (7) 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 Manager, for such amount as the Architect determines is properly due, and or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole or in part 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 (7) 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 (7) 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 information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, ~~information, information~~ and belief, the Work has progressed to the point ~~indicated, indicated and~~ the quality of the Work is in accordance with the Contract Documents, ~~and that the Contractor is, or Contractors are, entitled to payment in Documents.~~ The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid 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 information provided as part of the Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, ~~information, information~~ and belief, the Work has progressed to the point indicated, ~~that the~~ quality of the Work is in accordance with the Contract Documents, ~~and that the Contractor is, or Contractors are, is~~ 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, completion~~ and to specific qualifications expressed by the Construction Manager or Architect.

**§ 9.4.6** The issuance of a separate 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; Work,~~ (2) reviewed the Contractor's construction means, methods, techniques, ~~sequences, or procedures; sequences or procedures,~~ (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to ~~payment; 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.

**PAGE 51**

**§ 9.5.1** The Construction Manager or Architect may withhold a Certificate for Payment ~~or Project Certificate for Payment~~ in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section ~~9.4.3 and 9.4.4~~ 9.4.4 and 9.4.5 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.~~ 9.4.1. 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, evidence or subsequent observations,~~ may nullify the whole or a part of a ~~Certificate for Payment or Project~~ Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

...

- .2 third party claims filed or reasonable evidence indicating probable filing of such ~~claims, claims~~ unless security acceptable to the Owner is provided by the Contractor;

...

- .5 damage to the ~~Owner-Owner, another Prime Contractor or a Separate Contractor or other~~ Contractor;  
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or  
.7 ~~repeated~~ failure to carry out the Work in accordance with the Contract ~~Documents.~~ Documents;  
.8 receipt by the Owner of a notice of withholding from the New York State Department of Labor or other administrative agencies having jurisdiction over the Project;  
.9 failure to comply with applicable federal, state or local statutes, regulations, and/or laws, including, without limitation, laws and regulations applicable to the provision of certified payrolls;  
.10 failure of the Contractor to provide executed performance and payment bonds and a current certificate of insurance and endorsements;  
.11 reasonable evidence that the Work has not progressed as indicated on the Application for Payment;  
.12 damages caused to the Owner, Construction Manager, the Architect or another Contractor as a result the Contractor's performance of its Work;  
.13 the Architect's and/or the Construction Manager's discovery or observation of work which has been previously paid for by the Owner which is defective and/or incomplete;  
.14 The amount requested exceeds the percent completion of Work on the site; or  
.15 breach of this Agreement.

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

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party If the Contractor disputes any determination by the Owner, Construction Manager or Architect with regard to any Certificate for Payment or in the event of a bona fide dispute between the Contractor and Owner, the Contractor nevertheless shall expeditiously continue to prosecute the Work and may submit a Claim in accordance with Article 15.

§ 9.5.3 When the above reasons for withholding certification or the Owner's withholding of payment 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, or if the Owner otherwise deems it necessary to protect its interests or the interests of the Project, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor ~~or supplier or material or equipment suppliers~~ 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, Manager and both will reflect such payment on the next Certificate for Payment.



§ 9.5.5 Notwithstanding anything above to the contrary, the Owner has the right to withhold payment to the Contractor to protect itself against damages incurred or which may be incurred as a result of the Contractor's breach or negligence, including, but not limited to, the items set forth in Section 9.5.1. With respect to any liens, claims, or other circumstances for which the Owner is entitled to withhold payments pursuant to decisions by the Architect pursuant to Section 9.5.1, the Owner shall be entitled to withhold a sum equal to twice the stated amounts of such liens or claims, or, where there is no stated amount, twice the amount determined by the Architect to be necessary to protect the interests of the Owner. The Owner will release payments withheld due to liens provided that the Contractor obtains a discharge of record of such lien, by bonding or otherwise. By posting a lien discharge bond, however, the Contractor shall not be relieved of any responsibilities or obligations under the Agreement, including, without limitation, the duty to defend, indemnify, and hold harmless the Indemnitees (as defined previously in Section 3.18). The cost of any premiums or other expenses incurred in connection with such bonds or other means of discharge of record shall be the sole responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.5.6 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract, including but not limited to these General Conditions, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained herein to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

**PAGE 52**

§ 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 unless such requisition is not in accordance with the terms of the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held in trust by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contracts with the Contractor for which payment was made by the Owner. The Contractor shall strictly comply with any common law, statutory, or decisional law trust fund requirements in the State of New York (including, without limitation, the requirements of New York Lien Law Article 3-A), and hereby agrees that the Owner has the same rights as any beneficiary of such trusts to examine the books and records of the Contractor to determine such compliance, from time to time at the Owner's sole discretion. The Contractor shall promptly pay each Subcontractor, ~~no later than seven days after upon~~ receipt of payment from the Owner, ~~the amount to which the out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the such 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; similar manner.~~

§ 9.6.2.1 Within seven (7) days of receipt of a payment from the Owner, the Contractor shall pay each of its Subcontractors and suppliers for work performed and materials furnished by them as reflected in the payment from the Owner, less an amount necessary to satisfy any outstanding claims, liens, or judgments and less a retained amount of not more than 5%, except that the Contractor may retain not more than 10% provided that prior to entering into a Subcontract with the Contractor, the Subcontractor is unable or unwilling to provide a performance bond and labor and material payment bond both in the full amount of the subcontract at the request of the Contractor. The Contractor shall not retain portions of the proceeds owed any Subcontractor or supplier from the Owner's payment to the Contractor for the "contract balance." Similar provisions apply to the Subcontractor and/or supplier paying each of its Subcontractors and suppliers. Nothing in this Section shall create in the Owner any obligation to pay, or to ensure that the Contractor pays, any Subcontractor or supplier, or any relationship in contract or otherwise, implied or expressed, between any Subcontractor or supplier and the Owner. The Contractor agrees that it shall comply with the payment requirements of Section 106-b(2) of the New York General Municipal Law, as amended, and that to the extent there is any conflict between that statutory section and the provisions of this Section 9.6.2.1, the provisions of the statute shall prevail.

**PAGE 53**



**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors ~~and suppliers~~ to ascertain whether they have been properly paid. Neither the ~~Owner, Owner nor~~ Construction Manager nor Architect shall have an obligation to ~~pay, pay or~~ to see to the payment of money ~~to, to a~~ Subcontractor ~~or supplier~~, except as may otherwise be required by law.

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

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**§ 9.6.7** ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum,~~ payments ~~Payments~~ received by the Contractor for Work properly performed by Subcontractors ~~or provided by and~~ 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, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of ~~trust, or trust or shall~~ 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.~~

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. **§ 9.7.1** If, through no fault of the Contractor, the Construction Manager and Architect do not issue a Certificate for Payment within 20 days of the Construction Manager's receipt of the Contractor's Application for Payment or if, through no fault of the Contractor, the Owner does not pay the Contractor the amount certified by the Construction Manager and Architect, subject to the Owner's right to withhold payment under the terms of the Contract Documents, within 30 days of the date established for such payment in the Contract Documents, then the Contractor may, upon seven (7) additional days' written notice and opportunity to cure to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. To the extent it is determined that payment to the Contractor was improperly held through no fault of the Contractor and the Contractor elected to stop its Work consistent with the procedure set forth in this Section, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up as provided for in the Contract Documents. However, if the Contractor stops its Work and it is determined that the Owner had the right to withhold payment under the terms of the Contract Documents, then the Contractor shall be responsible to the Owner for all costs and damages (including attorneys' fees) arising from such stoppage of Work and the Contractor shall not be entitled to any adjustment in the Contract Sum or the Contract Time. This Section shall not apply: (a) to the extent that the Contractor owes to the Owner any amount pursuant to the provisions of this Contract, or (b) to the extent the Owner is required to expend amounts to purchase additional insurance on behalf of the Contractor to meet the insurance requirements of this Agreement.

**§ 9.7.2** If the Owner is entitled to payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract

Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs or expenses to cure any default of the Contractor or to correct defective work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

**PAGE 54**

**§ 9.8.1** ~~Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is~~ The date of Substantial Completion of the Project or a designated portion thereof is the date when construction is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use, the entire Project (or such portion thereof as Owner earlier elects to occupy or utilize) for the use for which it is intended. Minor items of completion or correction ("Punch List Work") may be performed after Substantial Completion, provided that such items can and shall be performed at such times and in such manner that such Work does not unreasonably interfere with the Owner's occupancy and use of the Project. Substantial Completion shall not be deemed to exist until (a) the Owner receives a Certificate of Occupancy for the Project (or such portion as elected by Owner) if such Certificate of Occupancy is required, and any other permits, approvals, licenses and any other documents from governmental authorities having jurisdiction therefore necessary for the beneficial occupancy of the Project and (b) the Contractor, Construction Manager, Architect and Owner have agreed upon a schedule for final completion and to provide the Owner with all as-built drawings, operating manuals, warranties and other required closeout documents. Warranties called for by the Agreement or by the Drawings and Specifications shall commence on the date of Substantial Completion of the Project or designated portion thereof, or any later date that the parties agree. This date shall be established by a Certificate of Substantial Completion signed by the Owner, Contractor, Architect and Construction Manager.

**§ 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, which shall identify all non-conforming, defective and incomplete Work and establish the date of commencement of warranties in connection with any such Work. 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 requirements of 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 Construction Manager or 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. If the Architect and the Construction Manager are required to perform additional substantial completion inspections because the Work fails to be substantially complete, the amount of compensation paid to the Architect and the Construction Manager by the Owner for additional services shall be deducted from the final payment to the Contractor.

**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, execute a Certificate of Substantial Completion that shall establish the date of Substantial Completion; Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Punch List Work, which timeframe shall not exceed 30 days. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the such Certificate. Upon such acceptance, acceptance and consent

of ~~surety~~ surety, if any, the Owner shall make payment of retainage applying to the ~~such~~ 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.

**§ 9.8.5.1** In conformance with New York General Municipal Law Section 106-b(1)(a), upon proper execution of Certificate of Substantial Completion of Work, the Contractor shall submit a requisition for payment of the remaining amount of the Contract Sum. Upon certification of payment by the Architect, the Owner will approve and promptly pay the remaining amount of the Contract Sum less two times value of any remaining items to be completed or corrected and less an amount necessary to satisfy any claims, liens or judgments against Contractor which have not been suitably discharged. Such payment shall be made under terms and conditions governing final payment except that the Owner's making of such payment shall not constitute the Owner's waiver of any objection to all or any portion of the Work performed by the Contractor or any claims the Owner may then have against the Contractor.

**§ 9.8.5.2** Neither the requisition for payment stipulated in Section 9.8.5.1 nor any portion of retained percentage shall become due until the Contractor submits to the Construction Manager:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or the Owner's property might in any way be responsible, have been paid or otherwise satisfied, the form of which will be the currently authorized AIA Document G706, "Contractor's Affidavit of Payment of Debts and Claims";
- .2 consent of all sureties, if any, to such payment, the form of which will be the currently authorized AIA Document G707A, "Consent of Surety to Reduction in or Partial Release of Retainage," but which will not be required if the amount withheld under Section 9.8.3.1 exceeds the amount of retainage; and
- .3 if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases, and waivers of liens arising out of contract to such extent and in such form as may be designated by the Owner.

**§ 9.8.5.3** As the Punch List Work is satisfactorily completed or corrected, the Contractor may submit a requisition for payment of these items. The Contractor shall submit with each such requisition for payment affidavits, consents of surety, and other data as described in Section 9.8.5.2 covering work for which payment is requested. Upon certification of such requisitions by the Architect and Construction Manager, the Owner will approve and promptly pay the requisition less an amount two times that which is necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

**§ 9.8.5.4** Where the Project includes heating, air conditioning, electrical, communication, data or other systems which 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 Contractor shall provide complete start up and commissioning of the systems with a detailed check list as recommended by the equipment or system manufacturer. The retained amount shall approximate five percent (5%) of the cost of the systems as determined by the cost breakdown submitted. The guaranty/warranty period for such systems will not commence until after such Architect approval.

**§ 9.8.5.5** The Contractor shall complete the Punch List Work for the Project no later than 30 days after Substantial Completion of the Project. The Contractor shall be fully liable to the Owner for all damages suffered by the Owner as a result of delay in achieving final completion of the Work, including without limitation, additional architectural and construction management fees related to extended services.

**§ 9.8.6** If the Architect or the Construction Manager is 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.

**PAGE 56**

**§ 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 as required under Section 11.3.1.5 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.

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**§ 9.9.4** The Contractor shall cooperate with the Owner in order to make portions of the Project available as soon as possible.

**§ 9.9.4.1** The Project site and buildings, whether work of the Contractor is partially or fully completed or not, are property of the Owner who shall have certain rights and privileges in connection with use of same.

**§ 9.9.4.2** Should there be, in the opinion of the Architect or Construction Manager, unwarranted delay on part of any Contractor in completion of incomplete or defective work or other Contract requirements, and the Architect so certifies, the Owner may have full or partial use and occupancy of any or all portions of buildings as required for moving in or installing furniture, fixtures, supplies, or equipment and for general cleaning and maintenance work. In such event, the Contractor whose unfinished work is done subsequent to installation of furniture, fixtures, equipment, etc., shall be responsible for the prevention of any damage to such installation. Such use or occupancy by the Owner shall in no instance constitute acceptance of any of the Work.

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and ~~acceptance~~, 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~~ will evaluate 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, Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect~~ 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 12.2 shall be set by the Architect at his discretion, but not later than the date of the final Certificate for Payment.

**§9.10.1.2** If the Architect and the Construction Manager are required to provide additional services, extend the duration of services to the Owner, and/or perform additional final inspections because the Work fails to comply with the requirements of the Contract Documents, or the Contractor did not complete the Work in accordance with the construction schedule or Project schedule, the amount of compensation paid to the Architect and the Construction Manager by the Owner for additional services shall be deducted from the final payment due 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) all closeout documents required by the Contract Documents, including, without limitation, as-built drawings, attic stock, maintenance manual, operating instructions and other documents required to be delivered under the Contract in connection with the Work in the form required by the Owner, (2) 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)-(3) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) effect and will not be canceled or allowed to

expire until at least 30 days' prior written notice has been given to the Owner, (4) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) (5) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and payment, (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and receipts, releases and waivers of liens, claims, security interests, interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner by the Owner, and (7) all warranties and guarantees required by the Contract Documents. 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 lien. If such lien 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, such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.2.1** In addition to the submittals required in Section 9.10.2 above, the Contractor shall submit separate final release or waivers of lien for each Subcontractor, material supplier, or others with lien rights against the Project, and shall submit a list of such parties.

**PAGE 57**

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

- .1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
  - .2 — failure of the Work to comply with the requirements of the Contract Documents;
  - .3 — terms of special warranties required by the Contract Documents; or
  - .4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment by the Owner
- shall not constitute a waiver of claims, causes of action, damages or complaints by the Owner.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing in accordance with Article 15 and identified by that payee in writing as unsettled at the time of the final Application for Payment.

**§ 9.10.6** At any time a lien is filed against the Project funds, the Owner may demand that the Contractor discharge said lien, through bonding or otherwise, and the Contractor must obtain the discharge of said lien within seven (7) days of such demand at the Contractor's sole cost and expense, and at no cost to the Owner. If any lien or other encumbrance required to be removed at the Contractor's sole cost and expense pursuant to this Section is not discharged of record as aforesaid, the Owner shall have the right to take such action as the Owner shall deem appropriate (which shall include the right to cause such lien or other encumbrance to be canceled and discharged of record), and in such event, all costs and expenses incurred by the Owner in connection therewith (including, without limitation, premiums for any bond furnished in connection therewith, and reasonable attorneys' fees, court costs and disbursements), shall be paid by the Contractor to the Owner on demand or, at the option of the Owner, deducted from any payment then due or thereafter becoming due from the Owner to the Contractor in accordance with the provisions of these General Conditions.

**§ 9.10.7** Existing warranties shall not deprive the Owner of any cause of action, right, or remedy otherwise available for breach of any of the provisions of the Contract Documents. The periods referred to above shall not be construed as limitations on the time in which the Owner may pursue any such action, right or remedy.

**§ 9.10.8** The Contractor shall achieve final completion of all Work, including, without limitation, correction of punch-list items, preparation and delivery of all manuals, presentation of training and completion of final paper submissions not later than 30 days following the date of Substantial Completion. In the event the Contractor shall fail to achieve final completion of the Work within such a period of time, the Contractor and the Contractor's surety, if any, shall be liable for and shall reimburse the Owner for any and all fees paid to the Architect and Construction Manager and other expenses made necessary by the Contractor's failure. Additional fees and expenses shall be charged by the Owner against any Final Payment due or which may become due to the Contractor, and the Contractor shall promptly pay or refund the Owner the excess, if any, upon the Owner's written request.

**PAGE 58**

The Contractor shall be responsible for initiating, implementing, directing, controlling, 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. The Contractor's safety precautions and programs shall include specific steps designed to minimize the risk of contracting or spread of COVID-19, including provision of all appropriate personal protective equipment, social distancing, avoiding stacking of trades, and other reasonable precautions.

...

**§ 10.2.1** The Contractor shall take ~~reasonable-necessary~~ precautions for safety of, and shall provide reasonable protection to prevent damage, injury, infection or exposure to COVID-19, or loss to

...

- .3 the Owner's real and personal property and other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, ~~structures,~~ structures and utilities not designated for removal, ~~relocation,~~ relocation or replacement in the course of construction; and
- .4 construction or operations by the Owner, Separate Contractors, or other ~~Contractors.~~ Contractors; and
- .5 the existing buildings and premises in the vicinity of or affected by the Contractor's operations.
- .6 the contractor agrees, in order that the work will be completed with the greatest degree of safety, to conform to the requirements of the NYS SED rescue regulations (excerpt of the constructors responsibilities section 155.5) and the Occupational Safety and Health Act of 1970 (OSHA) as amended and the Construction Safety Act of 1969 as amended, including all standard and regulations that have been since or shall be promulgated by the governmental authorities which administer such acts, and shall indemnify and hold harmless the owner, Construction Manager, the Architect, and all.

**§ 10.2.1.6** Safe access to and egress from any building under construction as part of this Contract, or any existing building in which Work is being done under this Contract, shall be maintained and remain unencumbered by the Contractor in accordance with all applicable codes, rules and regulations of authorities having jurisdiction on the Work. The Contractor and its Subcontractors shall cooperate in maintaining this condition. Roadways, paths, walks, exits, service drives and other areas shall remain unobstructed and shall be maintained in a safe and satisfactory condition, for all persons using the building and premises. Materials shall not be stored promiscuously about the site or in the building, but shall be carefully stored in areas which will not interfere with pedestrian traffic or with access to and egress from adjacent properties and use of the building. The Contractor shall provide and maintain such temporary Work as may be required for the protection of its finished Work where liable to injury. The Contractor will be responsible for all of its Work, materials and equipment that may be damaged or stolen during the duration of the Contract and until the Work is accepted by the Owner. The Contractor shall make good any such damage or loss without expense to the Owner. The Contractor shall not permit unnecessary hazards to be created nor permit them to continue if they are discovered. The Contractor's storage and staging areas shall be only in locations assigned or approved by the Owner and Architect and may be required to be relocated by the Contractor as building occupancy or use changes during the course of the Work. This relocation will be done by the Contractor at no additional cost to the Owner.

**§ 10.2.2** The Contractor shall comply with, and give notices required ~~by-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 the Labor Law of the State of New York, and regulations adopted thereunder, place upon both the Owner and the Contractor certain duties and that liability for failure to comply therewith is imposed on both the Owner and the Contractor regardless of their respective fault. The Contractor hereby agrees that, as between the Owner and the Contractor, the Contractor is solely responsible for compliance with all such laws and regulations imposed for the protection of persons performing the Contract. The Contractor shall indemnify and hold harmless the Owner of and from any and all liability for violation of such laws and regulations and shall defend any claims or actions which may be brought against the Owner as the result thereof. In the event that the Contractor shall fail or refuse to defend any such action, the Contractor shall be liable to the Owner for all costs of the

Owner in defending such claim or action and all costs of the Owner, including attorney's fee, in recovering such defense costs from the Contractor.

**§ 10.2.2.2** All laborers, workers, and mechanics employed in the performance of the Work of this Project shall be certified as having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least 10 hours in duration. The Contractor and its Subcontractors shall conduct their operation in accordance with the Safety Guides for Construction as issued by State Education Department, and the Contractor's safety program.

**§ 10.2.2.3** All safety equipment including hard hats, weather protective gear and PPE required for the Contractor to perform its Work are to be supplied by the Contractor or its Subcontractors. Within the designated construction areas, the Contractor's employees, superintendents, or other agents, and its Subcontractors, employees, superintendents, or other agents are required to wear hard hats and other required or essential safety equipment. Each person seen without a hard hat, or otherwise failing to comply with this requirement, will be ordered to leave the Project. No prior warnings will be given by the Owner, Construction Manager or Architect. The Contractor and its Subcontractors shall be solely responsible for making up and paying for any loss of production or required progress resulting from the removal of personnel from the Project as set forth herein including any costs incurred by the Owner in connection with the work of other contractors.

**PAGE 59**

**§ 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 10.2.1.4, except damage or loss 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 3-18.3.18, and shall not be limited by such damage or loss being insured under property insurance required by the Contract Documents.

**§ 10.2.6** The Contractor shall schedule weekly safety meetings and each of its Subcontractors must be properly represented at such meetings. 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 load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. The Contractor shall not load any part of the Work with materials, equipment, shores, bracing, or other items which in any way could cause damage to the Work or to other Work or could endanger persons in or about the Work.

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

**§ 10.2.9** The Contractor shall be responsible for all breakage of glass, which has been furnished and installed as part of Contract and existing glass that is broken due to operations under the Contract for Work. No matter by whom or what cause glass was broken, the Contractor shall replace all broken glass before completion and acceptance of the Contractor's Work. The Contractor may claim damages, if applicable.

**§ 10.2.10** In addition to all requirements set forth herein, the Contractor and its Subcontractors shall fully comply with the provisions of the federal Occupational Safety and Health Act of 1970, as amended, and with any rules and regulations pursuant to the Act. This requirement shall apply continuously and not be limited to normal working hours.



§ 10.2.11 The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor at its sole expense.

§ 10.2.12 The Contractor shall immediately contact the Construction Manager and, within 24 hours, report, in writing, to the Owner, Architect and Construction Manager, all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner, Construction Manager, and Architect.

§ 10.2.13 The Contractor shall be solely responsible for any conditions that 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 at the sole expense of the Contractor.

§ 10.2.14 The Contractor is responsible for restoration or repair of utilities, private property, buildings, pavement, walkways, roads, etc. damaged by its activities under this Agreement to the satisfaction of the Owner, Construction Manager and Architect.

§ 10.2.15 From the commencement to the final completion of the Work, the Contractor shall keep the Work and the Owner's building(s) free from accumulation of water no matter the source or cause of water infiltration.

§ 10.2.16 During construction, the Contractor shall be responsible for maintaining a watertight structure. This responsibility shall include additions/alterations of 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(s), the Contractor shall be responsible for all costs associated with clean up, remediation and repairs. Inasmuch as flooding and water damage have safety implications to the general public, clean up, remediation and repairs may be made by the Owner without prior notice 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 this Contract, agrees to be liable for these costs.

#### § 10.2.17 Injury or Damage to Person or Property

##### **PAGE 61**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances, and all applicable laws, rules and regulations regarding hazardous materials. 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-report the condition to the Owner, Construction Manager and Architect of the condition.~~ in writing. The Owner shall arrange for the material to be tested and if the test reveals that the material is a hazardous material or substance which has not been rendered harmless, the Owner shall pay for the test; otherwise, the Contractor shall bear the cost of the test and the Contract Sum shall be reduced by the amount of that cost. The Contractor shall comply with the reasonable instructions of the Owner after the test is conducted. This Section shall not apply in the case of asbestos which is to be removed and disposed of as part of the Work of the Contract.

§ 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-in the amount of the Contractor's reasonable additional costs of ~~shutdown, delay, shut-down, delay~~ and start-up.

**§ 10.3.3** To the fullest extent permitted by law, but only to the extent of available insurance proceeds, 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, 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 the person seeking indemnification: (1) did not bring such material onto the Project site; (2) timely provided notice of the condition and stopped Work in the affected area as required by Section 10.3.1; and (3) has a claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except itself). The Owner shall have no indemnity obligation to the extent that such damage, loss, loss or expense is due to the fault or negligence of the party seeking indemnity, indemnity or the fault or negligence of a third party for whom the Owner is not responsible.~~

**§ 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~~ indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of ~~hazardous materials or substances~~ a material or substance 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 or fault 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 (that was not brought to the site by the Contractor or those for whom the Contractor is responsible) solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

**§ 10.3.7** The Contractor shall notify the Owner of any storage, use, or discovery of hazardous material on the Project site which the Contractor knows or reasonably should know could cause bodily injury or death and of any injury or death attributable to any such hazardous material.

**§ 10.3.8** The Contractor shall take all reasonable precautions and measures to prevent any contamination by or spread or disturbance of hazardous or potentially hazardous substances or materials stored, used, or discovered on the Project site.

**§ 10.3.9** For the avoidance of any doubt, COVID-19 shall not be considered a Hazardous Material for purposes of this Article 10.3.

**PAGE 62**

~~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** The Contractor shall provide at the site, such equipment and medical facilities as are necessary to supply first-aid service to anyone at the Work.

**§ 10.4.2** The Contractor must promptly report in writing to the Construction Manager all emergencies whatsoever arising out of, or in connection with the performance of the Work, whether on, or adjacent to the site, which caused death, personal injury or property damages, giving full details and statements of witnesses. In addition, if death, injury, or damages are caused, the emergency shall be reported immediately to the Construction Manager, Owner, and Architect.

§ 10.4.3 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.

§ 10.4.4 All fire and emergency access, including roads, rights-of-way, corridors, doors, and stairs, and all existing fire and smoke detection systems shall be maintained at all times in accordance with fire safety laws. If the Work requires the temporary obstruction of any fire and emergency access or existing fire and smoke detection systems, the Construction Manager shall be notified at least 72 hours in advance.

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§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. agrees to secure and maintain, at Contractor's own expense, all insurance coverage required in this Article 11 from one or more insurance companies licensed and admitted to write such insurance in New York State. Insurers must carry an A.M. Best Financial Strength rating of A- or higher. The Contractor's insurance must include the following, without limitation, and must be written with limits no less than specified in Section 11.1.2:

- .1 claims under workers' compensation, disability benefit, and other similar employee benefit acts applicable to the Work to be performed, including, without limitation, claims by the employees of private entities performing Work at the site that are exempt from workers' compensation insurance coverage requirements on account of number of employees or occupation, which entities must maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness, disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including resulting loss of use resulting;
- .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 involving contractual liability applicable to the Contractor's obligations under Section 3.18.
- .8 A fully completed New York Construction Certificate of Liability Insurance Addendum (Acord 855 2014/15) must be included with the certificates of insurance. For any "yes" answers on Items G through L on this Form – additional details must be provided in writing. No exclusions, restrictions and/or modifications to coverages will be accepted.
- .9 Where the Contract or Subcontract involves asbestos, the insurance required by section 11.1 shall specifically include the words asbestos abatement work and shall specify any limitations on completed operation time. If there is a limitation it will be at the owner's discretion to accept or reject that limitation.**
- .10 Insurance must remain in effect at least until final payment and all items thereafter when the contractor may be correcting, removing or replacing defective work in accordance with this document, and
- .11 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:
  - .1 Premises operations without exclusion of x,c, and u coverage;
  - .2 Independent Contractors Protective;
  - .3 Products and completed operation;
  - .4 Personal Injury Liability;
  - .5 Owned, non-owned and owned motor vehicles
  - .7 Broad form property damage including completed operations

**§ 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. Coverages, whether written on an occurrence or claims-made basis, must 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. Claims-made coverage will only be allowed when the Contractor demonstrates that occurrence-based coverage is not available for a specific type of required coverage. The insurance required by Section 11.1.1 must be written for not less than the following limits, or greater limits as may be required by law, and include the following terms:

- .1 Commercial General Liability.** Occurrence-based Commercial General Liability coverage to include bodily injury, personal injury, and property damage applicable to ongoing operations, products & completed operations, and contractual liability, all with a per-project aggregate endorsement. No XCU exclusion is allowed for explosion, collapse, and underground operations. Products and Completed Operations coverage must be maintained in force for a minimum of two (2) years following Final Completion of the Project.

Minimum limits are:

\$2,000,000 General Aggregate  
\$2,000,000 Products and Completed Operations Aggregate  
\$1,000,000 Personal and Advertising Injury  
\$1,000,000 Each Occurrence  
\$1,000,000 Personal and Advertising Injury  
\$ 100,000 Fire Damage (any one fire)  
\$ 10,000 Medical Expense (any one person)

- .2 Automobile Liability.** Bodily Injury and Property Damage coverage for the Contractor as the owner or lessee of automobiles, trucks, trailers, self-propelled Contractor's equipment, and all other owned and non-owned vehicles registered for use on the public highway and/or used in operations relating to the Contractor's Work, with a minimum Combined Single Limit of \$1,000,000. If any such vehicles are to be used to transport hazardous materials, the Contractor shall also provide pollution liability broadened coverage evidenced by ISO Form CA 99 48 and MCS-90.

- .3 Excess Liability and/or Umbrella Liability.** Minimum limits are:

\$5,000,000 each Occurrence and \$5,000,000 for general construction and no work at elevation (1 story – 10 feet) or Project values less than or equal to \$1,000,000.  
\$10,000,000 each Occurrence and \$10,000,000 Aggregate for high risk construction, work at elevation (>1 story or 10 feet) or Project values greater than \$1,000,000.

Umbrella/Excess coverage shall be on a follow-form basis.

- .4 Workers' Compensation**

- .1 Workers' Compensation Requirements.** To comply with the New York State Workers' Compensation Law, the Contractor must (1) be legally exempt from obtaining workers' compensation insurance coverage, or (2) obtain such coverage from insurance carriers, or (3) be self-insured or participate in an authorized group self-insurance plan. Minimum limitations are:

Bodily Injury by Accident: \$500,000 Each Accident

Bodily Injury by Disease: \$500,000 Each Employee

Bodily Injury by Disease: \$500,000 Policy Limit

- .2 Workers' Compensation Coverage Evidence.** To demonstrate compliance with the New York State Workers' Compensation Law, the Contractor must provide **one** of the following forms to the Owner:

- .1** Either CE-200, "Affidavit For New York Entities And Any Out Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required"; or CE-200, "Affidavit That An Out-Of-State Or Foreign Employer Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage" (either affidavit must be stamped as received by the New York State Workers' Compensation Board); or

- .2** Either C-105-2, "Certificate of NYS Workers' Compensation Insurance Coverage" (for employers insured for workers' compensation through a private insurance carrier – the Contractor's insurance carrier must send this form to the Owner), or U-26.3, "New York State Insurance Fund Certificate of

Workers' Compensation Coverage" (for employers insured for workers' compensation through the State Insurance Fund); or

- .3** Either SI-12, "Certificate of Workers' Compensation Self-Insurance," or GSI-105-2, "Certificate of Participation in Workers' Compensation Group Self-Insurance (for employers participating in group self-insurance for workers' compensation – the Contractor's Group Self-Insurance Administrator must send this form to the Owner).

**.5 Employer's Liability/Disability**

- .1 Disability Benefits Requirements.** To comply with the New York State Disability Benefits Law, the Contractor must (1) be legally exempt from obtaining disability benefits insurance coverage, (2) obtain such coverage from insurance carriers, or (3) be self-insured.

- .2 Disability Benefits Coverage Evidence.** To demonstrate compliance with the New York State Disability Benefits Law, the Contractor must provide **one** of the following forms to the Owner:

- .1** Either CE-200, "Affidavit For New York Entities And Any Out Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required" or CE-200, "Affidavit That An Out-Of-State Or Foreign Employer Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage" (either affidavit must be stamped as received by the New York State Workers' Compensation Board); or

- .2** Either DB-120.1, "Certificate of Disability Benefits," or DB-820/829, "Certificate/Cancellation of Insurance" (the Contractor's insurance carrier must send either form to the Owner); or

- .3** DB-155 (3/04), "Certificate of Disability Benefits Self-Insurance."

- .6 Hazardous Materials.** If the Contractor's Work involves handling or disturbance of asbestos or other hazardous materials, the Contractor shall provide bodily injury and property damage liability insurance applicable to such operations, covering both ongoing operations and products & completed operations. Products and Completed Operations coverage must be maintained in force for a minimum of two (2) years following Final Completion of the Project. Coverage must be for limits not less than:

- .1** If covered by the Contractor's umbrella/excess liability policy:

\$2,000,000 General Aggregate

\$2,000,000 Each Occurrence or Incident:

- .2** If not covered by the Contractor's umbrella/excess liability policy:

\$6,000,000 General Aggregate

\$6,000,000 Each Occurrence or Incident:

- .7 Owner's Protective Liability Policy.** The XCU exclusion must be deleted, and the Named Insureds will be "Nanuet Union Free School District." Minimum limits are:

\$2,000,000 Each Occurrence

\$4,000,000 Aggregate

OCP coverage must be written with licensed and admitted carriers, list the district as the name insured. No additional insureds will be on the OCP.

**§ 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. Certificates of insurance acceptable to the Owner, together with copies of all insurance policies procured by the Contractor pursuant to this Article 11, including, without limitation, terms, conditions, declarations, riders, and endorsements, must be submitted to the Construction Manager for transmittal to the Owner, with copies to the Architect, prior to commencement of the Work. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage must be submitted with the final Application for Payment as required by Section 9.10.2.2. Information concerning reduction of coverage must be furnished by the Contractor with reasonable promptness. In addition to the Certificates of Insurance and accompanying documents, the Contractor shall provide to the Certificate Holders, on a timely basis, copies of any subsequently issued endorsements that amend any coverages or limits. In addition:

- .1** "Certificate Holders" are the Nanuet Union Free School District, 101 Church Street, Nanuet, NY, 10954

- .2** Coverages reflected in certificates of insurance and underlying policies must comply with all requirements of this Article 11.

- .3** All insurance documents must be executed with *authorized* signatures.

- .4** All required liability policies must be endorsed to provide that any Notice of Cancellation or Notice of Non-Renewal given to the First Named Insured must also be given to the Additional Insureds identified in Section 11.1.4. Copies of such endorsements must be furnished to the Certificate Holders.



- .5 Failure of the Owner to object to the Contractor's failure to furnish a certificate or other evidence of required insurance coverages, or to object to any defect in such certificate or other evidence, or to demand receipt of such certificate or other evidence, is not a waiver of the Contractor's obligation to furnish the required insurance coverages. Furthermore, nothing contained in this Article 11 imposes on the Owner a duty or obligation to review any certificates or other evidence of insurance coverages or to issue any formal approval or acceptance of such evidence, the duty and obligation of the Contractor being to provide insurance meeting the requirements of this Article 11 regardless of any review or lack of review by the Owner of the Contractor's evidence of insurance.
- .6 The Contractor's liability to and indemnification of the Owner is not relieved or diminished by the Contractor securing insurance coverage in accordance with this Article 11. Any acknowledgement of receipt of, or lack of objection by the Owner to, the Contractor's evidence of required insurance coverage is not acceptance in any way of any deficiencies in the Contractor's insurance coverage.

**§ 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.

**Additional Insureds**

**§ 11.1.4.1 Policies of insurance required under Sections 11.1.2.1 (Commercial General Liability), 11.1.2.2 (Automobile Liability), 11.1.2.3 (Excess Liability and/or Umbrella Liability), and 11.1.2.6 (Hazardous Materials – if applicable) must also apply to the following as Additional Insureds on a primary and non-contributory basis, with the following designation, unaltered:**

Nanuet Union Free School District and their respective employees, interim administrators, authorized volunteers, committee members, student teachers, auxiliary instructors, members of the Board of Education, and consultants (the "District Indemnitees"); KSQ Architects, PC and its consultants ("Designers"), and Jacobs ("Construction Manager"), during both ongoing and complete operations. The additional insured coverage provided shall not preclude coverage in favor of the any District Indemnitees, Designers, or Construction Manager, based on its lack of privity with Contractor or other third party additional insured. Further, such coverage shall not exclude or deny coverage to District Indemnitees, Designers, or the Construction Manager on the basis that the named insured Contractor's Work or operations are not performed directly for the District Indemnitees, Designers, or Construction Manager or other third party additional insured.

**§ 11.1.4.2 Coverage Evidence.** Additional Insured coverage must be effected through the use of **either** ISO Form CG CG 20 38 and CG 20 37 04 13 **together**. **Form CG 20 38** alone is not acceptable. Certificates of Insurance must clearly state how coverage is effected in the Excess/Umbrella Liability layer. Certificates of Insurance must show the form numbers used to effect all of the Additional Insured coverages. A copy of the actual policy language or endorsement that effects this coverage in each policy must be provided to the Owner and Construction Manager with the Certificate of Insurance. In the event Contractor is unable to procure such coverage specifically naming the "District Indemnitees," "Designers," "Construction Manager," or any other third party as an additional insured as required above, Contractor shall notify the Owner and Construction Manager prior to commencing Work and shall not proceed with any Work until authorized by the Owner to do so.

**§ 11.1.4.3 No Reliance on "Following Form."** The Contractor acknowledges that "Following Form" wording generally does not meet the primary and non-contributory coverage requirement for Additional Insureds, and that the coverage primacy aspect of Additional Insured coverage is typically addressed in the "Other Insurance" provisions of a policy's "Conditions" section, and often requires an amending endorsement to effect coverage on a primary and non-contributory basis. The Contractor therefore must provide such endorsements to the Owner, or other documentation acceptable to the Owner evidencing that the primary and non-contributory coverage requirements are met as to all policies for which they are required under Section 11.4.1.1.

**§ 11.1.5 Normal Expiration/Renewal.** When any required insurance is to expire due to a normal expiration or renewal date, the Contractor shall supply the Owner, at least ten (10) days prior to either such date, in addition to Certificates of Insurance, with either (1) copies of all renewed insurance policies, including, without limitation, terms, conditions, declarations, riders, and endorsements evidencing continuation of all coverages in the same manner, limits of protection, and scopes of coverage as was provided by the previous policy, or (2) if acceptable to the Owner, all declaration pages, mandatory riders, and/or endorsements that clearly evidence the continuation of all coverages in the same manner, limits of protection, and scope of coverage as provided by the previous policy.

**§ 11.1.6 Subcontractors.** The Contractor shall cause each Subcontractor to (1) procure insurance during the life of its Subcontract or Sub-subcontract the same insurances as are required of the Contractor as per this Article 11, and (2) cause the issuers of those insurance policies to name the Additional Insureds as Additional Insureds under each Subcontractor's comprehensive general, automobile, excess/umbrella, and hazardous materials liability policies. The Additional Insured endorsement included in each such Subcontractor's policies must state that coverage is afforded to all Additional Insureds with respect to any and all claims arising out of operations performed by or on behalf of the Contractor. If the Additional Insureds have other insurance otherwise applicable to a loss, such other insurance will only apply, if at all, on an excess or contingent basis. The amount of each Subcontractor's insurers' liability under each such insurance policy will not be reduced by the existence of such other insurance.

**§ 11.1.7 Owner Insurer Loss Payments.** In the event the Owner's insurer(s) make(s) any payment toward any loss covered under any policy of insurance the Contractor is required to procure under this Article 11, the Owner's insurer(s) are subrogated to all of the Contractor's rights of recovery against any person or organization including, but not limited to, the Contractor's insurer(s), and the Contractor shall execute and deliver all instruments, papers, and whatever else is necessary to secure those rights. The Contractor shall do nothing after the payment of any damages to prejudice those rights.

**§ 11.2 Owner's Insurance**~~Owner's Liability Insurance~~

The Owner shall purchase and maintain the Owner's usual liability insurance. The Owner may also, at its sole option, purchase and maintain other insurance for protection against claims that may arise from operations under the Contract Documents. The Contractor is not responsible for purchasing and maintaining such optional Owner's liability insurance unless specifically required in the Contract Documents. Neither the Owner's usual liability insurance nor any other insurance obtained by the Owner reduces or otherwise affects the Contractor's insurance requirements under Section 11.1.

**§ 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**Property Insurance

**§ 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. Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of New York, property insurance on a replacement cost basis. Such property insurance will 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 is 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 will include interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance will be on a builder's risk, "all-risk," or equivalent policy form and 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 will cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss. Coverage for other perils is not required unless otherwise provided in the Contract Documents. The form of policy for this coverage shall be Completed Value.

**§ 11.3.1.1.1** Contractor is responsible for all tools, equipment, materials, Work, etc., until Substantial Completion and possession by Owner. The 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 of New York.

**§ 11.3.1.2** 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 as full replacement cost basis without voluntary deductible. The Contractor shall provide Certificate copies to the Construction Manager showing the coverage for their materials in transit or stored off site.

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

**§ 11.3.1.4** The property insurance will cover portions of the Work stored off the site, and also portions of the Work in transit. The insurance required by this Section 11.3 will not, however, cover machinery, tools, equipment, vehicles, shanties, tool houses, trailers, or other temporary or permanent structures owned or rented by the Contractor, a Subcontractor, or a Sub-subcontractor, or their employees, utilized in performance of the Work but not incorporated into the permanent improvements. The Contractor is solely responsible for all such items of its own and any under its

control. The Contractor shall, at the Contractor's own expense, provide insurance coverage for all of the items described in this Section 11.3.1.4, which is subject to the provisions of Section 11.3.7.

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 may not commence until the insurance company or companies providing property insurance consent 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 Owner shall not be responsible to or for the Contractor or Subcontractor against any loss by fire, lightning, extended coverage, all risk, theft or vandalism and malicious mischief, or 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.

**§ 11.3.1.7** The form of policy for the coverage required by 11.3.1 shall be Completed Value.

**§ 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. **Boiler and Machinery Insurance.** The Owner, if applicable to the Work and at its sole option, may purchase and maintain boiler and machinery insurance or shall do so if required by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance will include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work.

**§ 11.3.3** Intentionally omitted.

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described in this Section 11.3 or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost for it will be charged to the Contractor by appropriate Change Order.

**§ 11.3.5** Intentionally omitted.

**§ 11.3.6** Upon the Contractor's request, the Owner will provide copies 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 (1) each other and any of their respective subcontractors, sub-subcontractors, agents and employees, and (2) the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their respective subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other causes of loss to the extent of proceeds under property insurance obtained pursuant to this Section 11.3 or other property 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. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and any of their respective subcontractors, sub-subcontractors, agents, and employees, by appropriate written agreements, similar waivers each in favor of other parties enumerated in this Section 11.3.7. The policies must provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation is 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 has an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance will be adjusted by the Owner and made payable to the Owner 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 written agreements shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner shall, upon occurrence of an insured loss, give a bond for proper performance of the Owner's duties. The cost of the bond will be charged against proceeds received. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement. If after such loss no other special agreement is made, and unless the Owner terminates the Contract for convenience, replacement of damaged property will be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner will adjust and settle a loss with insurers unless one of the parties in interest objects in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute will be resolved in the manner selected as the method of binding dispute resolution in the Agreement. Nothing in this Agreement calls for the name of any party other than the Owner as loss payee on the Owner's insurance and no draft or other instrument in payment of any loss will name any other party as a joint payee.

§ 11.3.11 The Contractor's Insurance Company shall acknowledge in writing to the Construction Manager that they have read and will comply with all requirements under Indemnification Section 3.18 of the General Conditions.

#### **§ 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.

#### **Performance Bond and Payment Bond**

##### **§ 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.

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising under it. Bonds must be obtained from a surety company or companies satisfactory to the Owner, licensed to do business in the State of New York, and listed in the latest issue of U.S. Treasury Circular 570. The amount of each bond will be equal to one hundred (100) percent of the Contract Sum. Each bond must be maintained throughout the duration of the Project, and subsequently to the extent the Contractor has ongoing performance and payment obligations following completion of the Project.

§ 11.4.1.1 No Performance or Payment Bond shall require, as a condition precedent to termination of a Contract or Contractor, that any notice be sent to or meeting be arranged or held with a Contractor (Principal) and/or surety, prior to such termination. Any such requirement(s) shall be void and unenforceable and the Owner shall have the

right to reject any such bond(s) and/or ignore such condition. The exclusive method of termination of a Contract or Contractor is contained in the Contract Documents and a Contractor and surety expressly agreed to be bound thereby.

**§ 11.4.1.2** Rider including the following provisions shall be attached to each Performance Bond: "Surety 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 relieve the surety of its obligations hereunder and notice to the surety of such matters is hereby waived"

**§ 11.4.2** Bonds must be prepared on the forms of AIA Documents A312-2010 - Performance Bond and A312-2010 - Payment Bond, without modifications other than (1) a mandatory statement in Section 16 of the Performance Bond that it is given as a statutory or other legally required bond and that Section 13 of the Performance Bond applies in full, without exception, (2) a mandatory statement in Section 16 of the Performance Bond that it includes performance by the Contractor of any correction and warranty obligations in the Contract Documents, including such performance after the dates of Substantial and Final Completion, and (3) a mandatory statement in Section 18 of the Payment Bond that it is given as a statutory or other legally required bond and that Section 14 of the Payment Bond applies in full, without exception. The cost of the bonds is included in and will not increase the Contract Sum.

- .1 The Contractor shall deliver the required bonds to the Owner not later than 7 days following the date the Agreement is entered into and before commencing any of the Work.
- .2 The Contractor shall require any attorney-in-fact who executes the required bonds on behalf of the surety to affix to the bonds a certified and current copy of their power of attorney authorizing him or her to sign the bond.
- .3 The bonds must specifically name the Nanuet Union Free School District as Obligee.

**§ 11.4.3** 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.

## PAGE 69

**§ 12.1.2** If a portion of the Work has been covered ~~that~~ which the Construction Manager or Architect has not specifically requested to ~~examine~~ 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, ~~the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate.~~ 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, ~~the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.~~ 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.

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

The Owner, through its Architect or Construction Manager, shall have the authority to reject Work performed by the Contractor ~~that does not conform to the requirements of the Drawings, Specifications, or both.~~ 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, whether discovered before or after Substantial Completion~~ and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

...

**§ 12.2.2.1** ~~In addition to the Contractor's obligations under Section 3.5, if, within one year~~ If, within two years after the date of Substantial Completion of the Work or ~~designated portion thereof, a designated portion of the Work, or the~~

date of acceptance of a portion of the Work that is subject to correction or completion after the date of Substantial Completion of the Work, whichever is later, 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 obligation set forth hereunder shall survive acceptance by the Owner of the Work or termination of the Contract. 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~~ two-year period for correction of the 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. Upon completion of any Work under or pursuant to this Section 12.2, the two-year period for correction of Work in connection with the Work requiring correction shall be renewed and recommence.

**§ 12.2.2.4** The obligations shall cover any repair and replacement to any part of the Work or other property caused by the defective Work.

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**§ 12.2.3.1** If the Contractor fails to commence to correct, repair and make good any defects in its Work within a reasonable time, not to exceed ten (10) days from the date the Contractor received written notice from the Owner per Section 12.2.2.1, the Owner may correct it in accordance with Section 2.5 and the Contractor shall, upon demand, pay to the Owner all amounts which it expends for such corrective work.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Multiple Prime Contractors or 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. The Contractor shall also replace or repair to satisfaction of Owner any and all damage done to the building or its contents in consequence of work performed in fulfilling any applicable warranty. This clause is general in nature and will not operate to waive stipulations of other clauses that specify warranty periods in excess of two (2) years.

**§ 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~~ two-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.

**PAGE 70**

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, determined by the Owner, with the advice of the Construction Manager and Architect. Such adjustment shall be effected whether or not final payment has been made. For this Section to apply, the Owner must accept non-conforming Work in writing specifying the non-conforming Work being accepted. Notwithstanding any acceptance by the Owner, if the Owner discovers non-conforming Work that the Owner has not expressly accepted in writing, the Owner may demand that the Contractor correct such Work as per the provisions of Article 12 hereof.

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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, State of New York, and the parties expressly agree that any claim, dispute, or other controversy of any nature arising out of the Contract or performance of the Work shall be commenced and maintained in New York State Supreme Court, **Rockland County**.

**§ 13.1.2** The Contractor shall at all times observe and comply with all federal, state and local laws and all laws, ordinances and regulations of the Owner, in any manner affecting the Work and all such orders decreed as exist at present and those which may be enacted later, by bodies or tribunals having jurisdiction or authority over the Work, and the Contractor shall defend, indemnify and save harmless the Owner and its Board of Education, officers, agents, or servants against any claim or liability arising from, or based on, a violation of any such law, ordinances, regulation, order or decree, whether by himself or by his employee or agents. Historical lack of enforcement of any law, local or otherwise, shall not constitute a waiver of Contractor's responsibility for compliance with such law in a manner consistent with the Agreement unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the agency responsible for the enforcement of such 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. Neither the acceptance of all or any part of the work covered by the Contract; nor any payment therefore; nor any order or application for payment issued under the Contract or otherwise issued by the Owner, Architect, Construction Manager, or any board member, officer, agent or employee of the Owner; nor any permission or direction to continue with the performance of the Contract before or after its specified completion date; nor any performance by the Owner of any of the Contractor's duties or obligations; nor any aid lent to the Contractor by the Owner in its performance of such duties or obligations; nor any delay or omission by the Owner to exercise any right or remedy accruing to it under the terms of the Contract or existing at law or in equity or by statute or otherwise; nor any other thing done or omitted to be done by the Owner, its commissioners, officers, agents or employees; shall be deemed to be a release to the Contractor or its sureties from any obligations, liabilities or undertakings in connection with the Contract or the performance bond or a waiver of any provision of the Contract or of any rights or remedies to which the Owner may be entitled because of any breach thereof, excepting only a written instrument expressly providing for such release or waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the Contract, because of any breach hereof, shall be deemed a waiver of any money damages to which the Owner may be entitled because of such breach. No waiver by the Owner of any breach of the Contract shall be deemed to be a waiver of any other or any subsequent breach.

**§ 13.3.3** The rights stated in these General Conditions and the Contract Documents are cumulative and not in limitation of any rights of the Owner at law or in equity.

**§ 13.3.4** The Owner shall not be responsible for damages or for loss of anticipated profits on Work not performed on account of any termination of the Contractor by the Owner or by virtue of the Owner's exercise of its right to take over the Contractor's Work.

**§ 13.3.5** The Owner shall not be liable to the Contractor for punitive damages on account of its termination of the Contractor or any other alleged breach of the Agreement and the Contractor hereby expressly waives its right to claim such damages against the Owner.

**§ 13.3.6** The Contractor hereby expressly waives any rights it may have in law or in equity to lost bonding capacity as a result of any of the actions of the Owner, the Architect or the Construction Manager taken in connection with the Contractor's Work on the Project.

**§ 13.3.7** The Contractor agrees that it waives the defense of privity of contract as between itself and each other Prime Contractor. In the event that an act or omission by a Prime Contractor or its Subcontractors of any tier causes impact, damage or loss in any form to the Contractor, then the Prime Contractor responsible in whole or in part for such impact, damage or loss agrees it is directly responsible and liable to the Contractor. The Contractor acknowledges and

agrees that this waiver of the defense or privity of contract permits and requires it to commence an action or suit directly against the responsible Prime Contractor. The Owner, Architect and the Construction Manager shall not be parties to such suit. The Contractor waives and relinquishes any right and claim as against the Owner, to the extent such claim is caused, or contributed to, by a Prime Contractor or its Subcontractors of any tier.

**PAGE 71**

**§ 13.4.1** Tests, ~~inspections~~, 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~~, rules and regulations or lawful orders of public authorities. Tests, inspections and approvals of portions of the Contractor's Work required by the Drawings or Specifications shall be made at an appropriate time. Unless otherwise provided, the Contractor shall ~~make arrangements~~ arrange for such tests, ~~inspections~~, 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~~, 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~~, (1) 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, concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations ~~so require~~ prohibit the Owner from delegating their cost to the Contractor.

**§ 13.4.2** If the Construction Manager, Architect, ~~Owner~~, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, ~~inspection~~, inspection or approval not included under Section 13.4.1, the Construction Manager ~~and Architect will~~, or Architect shall, upon written authorization from the Owner, instruct the Contractor to ~~make arrangements~~ arrange for such additional testing, ~~inspection~~, or approval, 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 ~~such~~ procedures for testing, ~~inspection~~, 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~~, 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~~. expenses shall be at the Contractor's expense, including the cost of retesting for verification of compliance if necessary until the Architect certifies that the Work in question does comply with the requirements of the Contract Documents, and none of such costs shall be included in computing the Contract Sum.

**§ 13.4.4** Required certificates of testing, ~~inspection~~, 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.

**PAGE 72**

**§ 13.4.7** Any material to be furnished shall be subject to inspections and tests in the shop and field by the Architect. Shop inspection shall not relieve the Contractor of the responsibility to furnish satisfactory materials and the right is reserved to reject any material at any time before final acceptance of the Work, when in the opinion of the Architect the materials and/or workmanship do not conform to the Specification requirements.

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~~ legal rate as required in General Municipal Law Section 106-b.

### **§ 13.6 Time Limits on Claims**

**§ 13.6.1** No action or proceeding shall lie or be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any claim arising out of or based on the Agreement or the Contract Documents or by reason of any act or omission or requirements relating to the giving of notices and information, unless such action or proceeding shall be commenced within one (1) year after submission to the Owner of the final Application for Payment. As to a claim based upon money required to be retained for any period after the date of the final Application for Payment, such action must be commenced within six (6) months after such money becomes due and payable under the terms of the Contract. Notwithstanding, if the Contract is terminated by the Owner, such action by

the Contractor must be commenced within six (6) months after the date of such termination. The Contractor's acceptance of final payment shall constitute a release of all claims against the Owner. This provision shall not relieve the Contractor of the obligation to comply with the provisions of the law relating to notices of claim.

§ 13.6.2 Acts or failures to act occurring during the construction of the Project or following the issuance of the final certificate for payment, which give rise to a cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor, whichever occurs last.

#### **§ 13.7 No Oral Waiver or Constructive Changes**

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by the Owner. No person is authorized on behalf of the Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by the Owner, and shall not relieve the Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

#### **§ 13.8 Notices Regarding Liens**

The Contractor shall provide to the Owner copies of all notices of any type regarding liens received from Subcontractors, Sub-subcontractors, or suppliers to the Contractor.

#### **§ 13.9 Wages Rates**

The Contractor shall, and cause its Subcontractors to, comply with prevailing wage rate determinations as issued by the State of New York Department of Labor for the location and duration of this Project. Current wage rates for this Project are included in the Project Manual.

#### **§ 13.10 General Provisions**

Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

#### **§ 13.11 Written Notice**

All notices to be given hereunder shall be in writing and may be given, served, or made by (1) depositing the same in the United States mail addressed to the authorized representative (as specified below) of the party to be notified, postpaid and registered or certified, read receipt requested or (2) depositing the same for overnight delivery (prepaid by and billed to the party giving notice) with a nationally recognized overnight delivery service addressed to the authorized representative of the party being notified or (3) delivering the same in person to the authorized representative of the party being notified or (4) emails to the attention of the authorized representative of the party to be notified with the requirement of a email confirmation notices deposited in the United States mail shall be effective, unless otherwise state in the Contract Documents, from and after the fourth day next following the date deposited in a United States mail receptacle or when actually received, whichever is earlier. Notices transmitted by overnight delivery shall be effective immediately. Email notices shall be effective as of the time received, as shown on a printed email confirmation.

**PAGE 73**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~90 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; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

- ~~.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, ~~9.4~~ and ~~9.5~~, 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 after 14 days written notice of such failure to make payment provided that such failure is not due to a disputed amount, and except to the extent the Owner is excused from timely making all or part of any payment on a Certificate for Payment as per any other provisions of the Contract Documents.

Notwithstanding the preceding or anything else in the Contract Documents, the Contractor shall not cease or delay the progress of the Work for any reason other than one set forth in Section 9.7.1, it being agreed that monetary damages shall be an adequate remedy for the Contractor for any breach of this Agreement or the Contract Documents by the Owner.

**§ 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.~~ completion.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon ~~seven days' notice to the Owner, Construction Manager and Architect, 30 days' written notice and opportunity to cure to the Owner,~~ 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.~~ such Work properly performed for which it has not otherwise been compensated, but in no event shall the Owner be liable to the Contractor for any prospective loss, including, but not limited to, termination expenses, loss of anticipated profits, impact damages, unabsorbed overhead, or the like. Notwithstanding the foregoing, any such payments to the Contractor shall be less any setoffs to which the Owner may be entitled as per any other provision of the Contract Documents.

**§ 14.1.4** If the Work is stopped for a period of ~~60-90~~ consecutive days through no act or fault of the ~~Contractor, a Subcontractor, a Sub-subcontractor, Contractor or a Subcontractor~~ or their agents or ~~employees, employees~~ or any other persons performing portions of the Work under contract with the Contractor 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-30~~ additional days' written notice to the Owner, ~~Construction Manager and Architect, and Architect~~ (during which the Owner shall have the right and opportunity to cure), terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### PAGE 74

- ~~.1~~ repeatedly-refuses or fails to supply enough properly skilled workers or proper materials; materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful, and careful manner;
- ~~.2~~ fails to make payment to Subcontractors or suppliers or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the its Subcontractors or suppliers; Suppliers;
- ~~.3~~ repeatedly-disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or authority, or its health and safety plan;
- ~~.4~~ otherwise is guilty of substantial breach of a provision of the Contract Documents or default under a provision of the Contract Documents;
- ~~.5~~ cannot complete the Work within the Contract Time or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Owner's opinion, attributable to conditions within the Contractor's control;
- ~~.6~~ breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- ~~.7~~ is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the Work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders;
- ~~.8~~ fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all requirements of the Contract Documents;

- .9 refuses to proceed with the Work or extra work when and as directed by the Owner, Construction Manager or Architect;
- .10 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than 10 days, except as permitted under the Contract Documents;
- .11 fails or neglects to complete the Work within the Contract Time or in accordance with the Construction Schedule;
- .12 refuses or fails to correct deficient Work performed by it;
- .13 the Contractor's progress of the Work is such that the Owner reasonably believes that the Contractor shall not be able to achieve Substantial Completion by the Substantial Completion Date and the Contractor has not delivered and implemented a recovery plan required under the Contract or has not recovered the schedule sufficient to meet the respective Contract Time requirements as required by written notice to the Contractor by the Owner; or
- .14 disregards the instructions of the Construction Manager, Architect or Owner (when such instructions are based on the requirements of the Contract Documents).

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, above reasons exist, 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 (7) days' written notice, terminate employment of the Contractor at the expiration of such seven (7) day period, and may, subject to any prior rights of the surety:

...

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient-expedient utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site, and also such subcontractors as it may deem advisable, or if may call upon the Contractor's surety at its own expense to do so. 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. Such accounting shall be final, binding and conclusive upon the Contractor, its surety, and any person claiming under or through the Contractor, as to the amount thereof.

## PAGE 75

**§ 14.2.4.1** The costs of finishing the Work also include, without limitation, all reasonable attorneys' fees incurred in responding to the default and enforcing the Owner's rights under the Contract Documents (including costs and fees incurred in dispute resolution proceedings), additional title costs, insurance, additional interest because of any delay in completing the Work, loss of State Building Aid, and all other direct and consequential damages incurred by the Owner by reason of the termination of the Contractor as stated herein.

**§14.2.4.2** It is recognized that: (1) if an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract. Failure to comply with such request within ten (10) days of delivery of the request, or Owner's determination that the assurances are not adequate, shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.4 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be back charged against the Contract Sum.

**§ 14.2.5** If the Owner wrongfully terminates the Contract for cause, the rights, remedies and obligations of the parties will be the same as if the Owner had terminated the Contract for convenience under Section 14.4.

**§ 14.2.6** In the event that the Contractor, or the Contractor's surety, challenges the Owner's termination of the Contract for cause, and the Owner prevails in litigation in connection with such challenge, whether initiated by the



Owner or by the Contractor or the Contractor's surety, the Owner shall be entitled to its costs, including reasonable attorney's fees, incurred as a result of such litigation, as part of any judgment against the Contractor or the Contractor's surety. Such costs, including reasonable attorney's fees, shall be deemed a cost of finishing the Work.

**§ 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. The Owner shall incur no liability by reason of such suspension, delay, or interruption except that the Contractor may request an extension of its time to complete its Work in accordance with Article 8 hereof.

...

**§ 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-time caused by suspension, delay or interruption as described in 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, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or~~

#### PAGE 76

**§ 14.4.1** The Owner may, at any time, terminate the whole or any portion of the Contract for the Owner's convenience and without cause; cause upon not less than seven (7) days' written notice to the Contractor. Notwithstanding any other provision to the contrary in the Contract, the Owner reserves the right at any time and in its absolute discretion to terminate the services of the Contractor or the Work by giving written notice to the Contractor. This termination for convenience of the Owner provision allows and authorizes the Owner to terminate this Contract at any time and for any reason whatsoever. This right may be exercised by the Owner in its complete discretion. Termination by the Owner under this Section shall be by Notice of Termination delivered to the Contractor specifying the extent of termination and the effective date.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately and in accordance with instructions from the Owner:

...

- ~~.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; and~~
- ~~.4 proceed to complete the performance of the Work required under portions of the Contract not terminated, if any.~~

**§ 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.~~ Upon receipt of written notice of the Owner's exercise of such termination, the Contractor shall, as the Contractor's sole and exclusive remedy, be paid for the Work properly executed in accordance with the Contract Documents prior to the effective date of termination and for items properly fabricated off-site, delivered and stored in accordance with the Owner's instructions or the Contract Documents before such effective date. The Contractor's entitlement to payment for all such work shall be predicated on its performance of such work in accordance with the Contract Documents as certified by the Architect and Construction Manager. The Contractor shall be entitled to no other payment and waives any claim for damages including, but not limited to, lost profits, any prospective loss, underutilization of personnel or equipment, unabsorbed overhead, and any and all items of consequential loss or damage. The Owner shall be entitled to credit against any payment to be made to the Contractor pursuant to this Section 14.4 the following: (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims which the Owner has against the Contractor under the Contract Documents; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor, the cost of which is included in the Contract Sum. Notwithstanding the foregoing, in the event of a termination under Section 14.4.1 prior to the issuance of a Notice to Proceed, the Contractor shall not be entitled to any compensation whatsoever.

...

**§ 15.1.1 Definition.** A Claim is a demand or assertion by ~~one of the parties~~ the Contractor 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.~~ Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a reservation of rights, nor minutes of a meeting, nor a daily report, nor any log entry, nor an Owner's request for or the Contractor's response to a Change Order proposal, nor notice of a potential or future claim shall constitute a Claim.

...

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** Claims by the Contractor must be initiated by written notice to the Owner and the Initial Decision Maker. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier.

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, ~~whichever is later.~~ the Contractor must be initiated by written notice to the Owner and to the Architect with a copy sent to the Construction Manager within the time limits set forth in Section 15.1.2.1 above. The purpose of the written notice is to give the Owner prompt opportunity: (a) to cancel or revise orders or directions, change plans, mitigate or remedy circumstances giving rise to the Claim or to take other action that may be desirable; (b) to monitor and verify the facts and circumstances as they occur; and (c) to verify any costs and expenses claimed by the Contractor contemporaneously as they are incurred. Written notice is required whether or not the Owner, Construction Manager or Architect is aware of the facts or circumstances that constitute the basis for the Contractor's Claim, and no action or conduct of the Owner, Construction Manager, Architect or any other person will be regarded as a waiver of such notice requirement except only a written statement to such effect signed by the Owner. Failure of the Contractor to give written notice as required by this Section shall be deemed conclusively to be a waiver and release of any Claim, and such written notice shall be a condition precedent to the Contractor's right to make any Claim arising out of, under or in connection with the Contract or its performance of the Work.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. Written notice shall contain a heading stating "Notice of Claim" to clearly identify it as such. Such notice shall set forth in detail the circumstances that form the basis for the Claim and shall include the following: (1) a clear statement of the claim, including background and chronology; (2) documentation in support of the claim; (3) documentation in support of claimed damages; and (4) certification by responsible officer of the Contractor. The responsibility to substantiate Claims shall rest with the Contractor. An additional Claim arising from the same occurrence or condition made after the Initial Claim has been implemented by Change Order shall not be considered.

**§ 15.1.3.3** The Contractor agrees that it has and will make no claim for damages against the Owner by reason of any act or failure to act by any other Contractor, Separate Contractor or Subcontractors having contracts for performance of any portion of work of the Project or in connection with the Owner's, Architect's or Construction Manager's acts or omissions to act in connection with such other Contractors, Separate Contractors or Subcontractors.

**§ 15.1.4.1** Pending final resolution of a ~~Claim~~, Claim by the Contractor, except as otherwise agreed in writing or as provided in Section 9.7 and ~~Article 14, 9.7~~, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments ~~in accordance with the Contract Documents~~, of undisputed amounts in accordance with the Contract Documents; provided, however, that the Contractor shall use its best efforts to furnish the Architect and Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Architect and the Owner in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. The Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

**§ 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, ~~written notice as provided in Section 15.1.3 herein shall be given before proceeding to execute the portion of the Work that is the subject of the Claim.~~ Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.10.3. The Contractor agrees that an express condition precedent to the Contractor's entitlement to any increase in the Contract Sum shall be full and complete compliance to the satisfaction of the Owner with the requirements of Article 15. The Contractor acknowledges the no damages for delay provisions set forth in Sections 8.3.2 and 15.1.6.1.4 hereof.

**§ 15.1.5.1** The Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time if:

- .1 The Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Sum and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or
- .2 The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for the Contractor prior to Contractor's making such final commitment;
- .3 The Contractor failed to give the written notice within the time and as required by Section 15.1.2; or
- .4 If the Owner and the Contractor are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Sum or Contract Times, a claim may be made therefore as provided in Article 15. However, the Owner, Construction Manager, and Architect shall not be liable to the Contractor for any claims, costs, losses or damages sustained by the Contractor on or in connection with any other project or anticipated project.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in ~~Section~~ Sections 15.1.2 and 15.1.3 shall be given. The Contractor's Claim shall include an estimate of ~~cost and of the probable~~ effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**§ 15.1.6.1.1** An application for extension of time must set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner, Construction Manager or Architect may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim for an increase in the Contract Time.

**§ 15.1.6.1.2** The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

§ 15.1.6.1.3 The Contractor agrees that an express condition precedent to the Contractor's entitlement to any extension of the Contract Time shall be full and complete compliance to the satisfaction of the Owner with the requirements of Articles 8 and 15.

§ 15.1.6.1.4 The Owner shall not be liable to the Contractor or any of its Subcontractor for claims, impact costs, extended general conditions or delay damages of any nature caused by or arising out of delay, disruption, interference, inefficiencies, impedance, hindrance, acceleration, resequencing, schedule impacts, lack of timeliness by the Owner or its Architect or Construction Manager, and lack of coordination or scheduling, cumulative impact of multiple change orders, errors or omissions in the design of the Project, delay and other performance impacts. The sole remedy against the Owner for such 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. Except to the extent, if any, expressly prohibited by law, the Contractor expressly agrees not to make and hereby waives any claim for damages for delay, including, but not limited to, those resulting from increased labor or material costs, extended general conditions, directions given or not given by the Owner, Construction Manager, or Architect, including scheduling and coordination of the Work; the Architect's preparation of drawings and specifications or the Construction Manager's or Architect's review of shop drawings and requests for instructions; errors or omissions in the design of the Project; or, on account of any delay, disruption, interference, impedance, inefficiency, lack of productivity, obstruction or hindrance for any cause whatsoever by the Owner, Construction Manager, Architect or any other Contractor or Separate Contractor on the Project whether or not foreseeable or anticipated. The Contractor agrees that its sole right and remedy therefore shall be an extension of time, if appropriate. It is emphasized that no monetary recovery may be obtained by the Contractor for delay against the Owner, Construction Manager, Architect, other Contractor or Separate Contractor based on any reason and that the Contractor's sole remedy, if appropriate, is additional time.

§ 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. In planning his construction schedule within the agreed Contract Time, it shall be assumed that the Contractor has anticipated the amount of adverse weather conditions normal to the site of the Work for the season or seasons of the year involved. Only those weather delays attributable to other than normal weather conditions will be considered by the Architect.

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

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

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

**PAGE 78**

§ 15.2.1 Claims, 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 by the Contractor excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation-binding dispute resolution of any Claim. If an initial decision has not been rendered within 30 days after the Contractor's Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and Contractor may proceed with 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 by the Contractor and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating ~~Claims~~, Claims by the Contractor, 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 by the Contractor or to furnish additional supporting data, such party shall respond, within ~~ten~~ 10 days after receipt of ~~the such~~ 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~~, 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 by the Contractor in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the ~~Claim~~, Claim by the Contractor, 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 parties and the Architect and Construction Manager, if the Architect or Construction Manager 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.

§ 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.~~ Intentionally omitted.

§ 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.~~ Intentionally omitted.

§ 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.~~ Intentionally omitted.

§ 15.2.8 If a Claim by the Contractor 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.

## ARTICLE 16 SPECIAL CONDITIONS

### § 16.1 Equal Opportunity

§ 16.1.1 The Contractor shall maintain policies for equal employment opportunity for construction employment. During performance of the Agreement, the Contractor agrees as follows:

§ 16.1.2 The Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including trans-gender), sexual orientation, or national origin. The Contractor shall take affirmative action to ensure that all applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, (including trans-gender), sexual orientation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship and on-the-job training.

§ 16.1.3 The Contractor will post and keep posted in conspicuous places, for employees and applicants for employment, notices obtained by the Contractor from the New York State Division of Human Rights as set forth in the General Regulations of that Division at 9 NYCRR 466.1(a), such conspicuous places to be as defined in 9 NYCRR 466.1(b), and such other postings as that Division may require with respect to New York State's laws, codes, rules, and regulations governing discrimination in employment.

§ 16.1.4 The Contractor will state in all solicitations or advertisements for employees placed by, or on behalf, of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, **sex, (including trans-gender), sexual orientation,** or national origin.

§ 16.1.5 The Contractor will comply with provisions of Sections 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the Contractor's books, records and accounts by the Owner, the State Commissioner of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these nondiscrimination clauses and such sections of the Executive Law and Civil Rights Law.

§ 16.1.6 The Contractor will send to each labor union, or representatives of workers, with which it has, or is bound by a collective bargaining or other Agreement or understanding notices obtained from the State Commissioner of Human Rights, advising such Labor Union or representative of the Contractor's Agreement under requirements of this Article. If the Contractor was directed to do so by Owner as part of the Bid, the Contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, color, **sex, (including trans-gender), sexual orientation,** or national origin and that such labor union or representative either will affirmatively cooperate within the limits of its legal and contractual authority in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the Owner and State Commissioner of Human Rights of such failure or refusal.

§ 16.1.7 The Agreement may be forthwith canceled, terminated or suspended in whole, or in part, by Owner upon the basis of a finding made by the State Division of Human Rights, that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future Contracts made by, or in behalf of, the State, or Authority or Agency of the State, or Housing Authority or an Urban Renewal Agency, or Contracts requiring the approval of the Commissioner of Housing and Community Renewal, until it has satisfied the State Division of Human Rights, that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such findings shall be made by the State Division of Human Rights after conciliation efforts by the Division have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Division, notice thereof has been given to the Contractor, and an opportunity has been afforded by the Contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked immediately of, or in addition to sanction in remedies otherwise provided by law. If the Agreement is canceled or terminated under provisions of this Article, in addition to other rights of Owner provided in the Agreement upon its breach by the Contractor, the Contractor will hold Owner harmless against any additional expenses or costs incurred by Owner in completing the work or in purchasing the services, materials, equipment or supplies contemplated by Agreement and Owner may withhold payments from the Contractor in an amount sufficient for this purpose and recourse may be had against authority on the Performance Bond if necessary.

§ 16.1.8 The Contractor will include the provisions of this Article in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontractor or purchase order as the State Division of Human Rights or the Owner may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or a vendor, as a result of such direction by the State Division of Human Rights, the Contractor shall promptly so notify the Owner and the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

## **§ 16.2 Waiver of Immunity**

**§ 16.2.1** The Contractor hereby agrees to the provisions of Paragraph 139-a and 139-b of the New York State Finance Law and Section 103-a of the New York General Municipal Law, which require that upon the refusal of a person, when called before a grand jury, head of a State department, temporary State commission or other State agency, or the organized crime task force in the Department of Law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

**§ 16.2.1.1** Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with New York State or any public department, agency or official thereof for goods, work or services, for a period of five years after such refusal.

## **§ 15.3 Mediation**

**§ 16.2.1.2** Any and all contracts made with the State of New York, or any public department, agency or official thereof since the effective date of this law, by such person, and by an firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by the State of New York without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the State of New York for goods delivered or work done prior to the cancellation or termination shall be paid.

## **§ 16.3 Non-Collusive Clause as Required by NYS General Municipal Law Section 103-d**

**§ 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.

**§ 16.3.1** Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.

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

**§ 16.3.2** By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief, the following:

**§ 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.

**§ 16.3.2.1** The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competitions, as to any matter relating to such prices with any other bidder or with any competitor.

**§ 16.3.2.2** Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly



disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.

**§ 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.

**§ 16.3.2.3** No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

**§ 16.3.3** A bid shall not be considered for award nor shall any award be made where requirements of this Article have not been complied with; provided however, that in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which set forth in detail the reasons therefore. Where requirements of this Article have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing agent of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

#### **§ 15.4 Arbitration**

**§ 16.3.4** The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed, or pending, publication of new or revised price list for such items, or (c) has sold the same items to other customers at the same prices being bids, does not constitute a disclosure within the meaning of this Article.

**§ 16.3.5** Any bid hereafter made to any political subdivision of the state or any public department, agency official thereof by a corporate bidder for work or services performed or to be performed or good sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

**§ 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.

#### **§ 16.4 Assignment of Public Contracts**

As provided in Section 109 of the General Municipal Law, the Contractor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the same, or of his right title, or interest therein, or his power to execute such contract or any other person or corporation without the previous consent in writing of the officer, board or agency awarding the contract. If any contractor, to whom any contract is let, granted and awarded, as required by law, by any officer, board or agency in a political subdivision, or of any district therein, shall without the previous written consent specified in subdivision one of this section, assign, transfer, convey, sublet or otherwise dispose of such contract, or his right, title or interest therein, or his power to execute such contract, to any other person or corporation, the officer, board or agency which let, made, granted, or awarded such contract shall revoke and annul such contract, and the political subdivision or district therein, as the case may be, and such officer, board or agency shall be relieved and discharged from any and all liability and obligations growing out of such contract to such contractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such contractor, and his assignees, transferees or sublessees shall forfeit and lose all moneys, theretofore earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent, or affect an assignment by any such contractor for the benefit of his creditors made pursuant to the laws of this state.



## **§ 16.5 Fingerprinting**

Pursuant to the Safe Schools Against Violence in Education Act ("SAVE" legislation) and Part 87 of the Regulations of the Commissioner of Education, any individual who, as a result of their work on this capital project, will move (or migrate) in and out of student occupied areas for more than five (5) days a year, must be fingerprinted. The Contractor shall be responsible to ensure that it (and its employees) are in full compliance with the fingerprinting provisions New York's SAVE Legislation and Part 87 of the Regulations of the Commissioner of Education at the Contractor's sole cost and expense.

~~§ 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.~~

## **ARTICLE 17 NEW YORK STATE LABOR LAW REQUIREMENTS**

### **§ 17.1 Working Hours**

~~§ 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.~~

§ 17.1.1 The Contractor specifically agrees as required by the New York State Labor Law ("Labor Law"), Sections 220 and 220-d, as amended, that:

- .1 No laborer, worker, or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or any part of the work included in the Contract Documents shall be permitted or required to work more than eight hours in any one calendar day or more than five (5) days in any one week, except to the extent permitted in the case of extraordinary emergencies described in the Labor Law.
- .2 The wages to be paid to each laborer, worker, or mechanic in the employ of the Contractor, Subcontractor, or other person doing or contracting to do all or any part of the work included in the Contract Documents for a legal day's work shall be not less than the prevailing rate of wages as defined by the Labor Law.
- .3 Each laborer, workman or mechanic employed by the Contractor, a Subcontractor, or other person doing or contracting to do all or any part of the work included in the Contract Documents shall be provided the supplements required by Article 8 of the Labor Law.
- .4 The minimum hourly rate of wage to be paid shall be not less than that stated in the General Conditions, and shall be as designated by the industrial Commissioner.
- .5 The Contractor's and any Subcontractor's or other person's filing of payrolls in a manner prescribed by subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to the to the Owner's payment of any sums due and owing to the Contractor, Subcontractor or other party for work done on or with respect to the Project.

### **§ 17.2 Wage Rates**

~~§ 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.~~

§ 17.2.1 The Contractor specifically agrees, as required by the Labor Law, that the Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

- .1 the prevailing wage rates as provided in Labor Law Section 220(3) as amended, or,
- .2 the minimum wage rates as provided in Labor Law Section 220-d, as amended.

§ 17.2.2 The Contractor shall comply with Prevailing Wage Rates as issued by the State of New York Department of Labor for the location and duration of this Project. Current wage rates for this project are included in the Project Manual as part of the Contract Documents. The Contractor is responsible to regularly review "Prevailing Wage Schedules/Updates" available on the "Prevailing Wage/Public Work" link on State of New York Department of Labor "Business in New York" web page ([www.labor.state.ny.gov](http://www.labor.state.ny.gov)) to identify and implement any applicable changes to Prevailing Wage Rates during the Project.

#### **§ 15.4.4 Consolidation or Joinder**

**§ 17.2.3** The Contractor shall comply with all the requirements of the Labor Law Section 220-a, as amended, regarding mandatory submission of certified payroll records, which shall be included with each application for payment.

**§ 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.

#### **§ 17.3 Anti-Discrimination**

**§ 17.3.1** The Contractor specifically agrees, as required by the provisions of Section 220-e of the Labor Law, as amended, that:

- .1** In the hiring of employees for the performance of work under the Contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall be reason of race, creed, color, **sex (including transgender)**, sexual orientation, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- .2** No contractor, subcontractor, nor any person on its behalf, shall in any manner, discriminate or intimidate any employee hired for the performance of work under the contract on account of race, creed, color, sexual orientation, or national origin.
- .3** There may be deducted from the amount payable to the Contractor by the Owner under the contract a penalty at fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract; and
- .4** The Contract may be canceled or terminated by the Owner, and all monies due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract.

### **ARTICLE 18 GENERAL MUNICIPAL LAW REQUIREMENTS OF THE STATE OF NEW YORK**

#### **§ 18.1 Payment of Contractors and Subcontractors**

**§ 18.1.1** The Contractor specifically agrees it is bound by Section 106-b of the New York General Municipal Law.

### **ARTICLE 19 SPECIFIC CONFORMANCE TO THE LAWS OF THE STATE OF NEW YORK**

#### **§ 19.1 Statutory Requirements**

**§ 19.1.1** The parties agree that each is bound to the provisions of the laws of the State of New York governing bidding and contracting for public improvement projects, including but not limited to applicable provisions of the General Obligations Law, Labor Law, and General Municipal Law. To the extent any provisions in the Contract Documents conflict with any provisions of New York Law, the statutory provisions shall prevail and the conflicting provisions in the Contract Documents shall be deemed to conform to the statutory provisions.

**§ 19.1.2** To the extent the laws of the State of New York governing bidding and contracting for public improvement projects mandate inclusion of specific terms in contracts for such improvements, but which are not already included in these General Conditions, such terms shall be deemed and hereby are incorporated into these General Conditions.

**§ 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, David Short, 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 15:08:42 ET on 02/07/2024 under Order No. 2114442937 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)*

---

*(Title)*

---

*(Dated)*



# AIA<sup>®</sup> Document G716<sup>™</sup> – 2004

## Request for Information (“RFI”)

**TO:**

Ofe Pearson:  
opearson@ksq.design

KSQ Design

**PROJECT:**

Nanuet UFSD  
Nanuet Bond Projects Phase 5

**FROM:****ISSUE DATE:**

RFI No.

**REQUESTED REPLY DATE:****COPIES TO:**

**PROJECT NUMBERS:** 2411001.00

**RFI DESCRIPTION:** *(Fully describe the question or type of information requested.)*

**REFERENCES/ATTACHMENTS:** *(List specific documents researched when seeking the information requested.)*

**SPECIFICATIONS:**

**DRAWINGS:**

**OTHER:**

**SENDER'S RECOMMENDATION:** *(If RFI concerns a site or construction condition, the sender may provide a recommended solution, including cost and/or schedule considerations.)*

**RECEIVER'S REPLY:** *(Provide answer to RFI, including cost and/or schedule considerations.)*

**BY**

**DATE**

**COPIES TO**

**Note:** This reply is not an authorization to proceed with work involving additional cost, time or both. If any reply requires a change to the Contract Documents, a Change Order, Construction Change Directive or a Minor Change in the work must be executed in accordance with the Contract Documents.



# AIA® Document A312® – 2010

## Performance Bond

**CONTRACTOR:**

(Name, legal status and address)

**SURETY:**

(Name, legal status and principal place of business)

**OWNER:**

(Name, legal status and address)

Nanuet Union Free School District  
101 Church Street  
Nanuet, NY 10954

**CONSTRUCTION CONTRACT**

Date:

Amount: \$

Description:

Contractor to input below information

**Project Name:** NANUET BOND PROJECTS PHASE 5

HIGHVIEW ELEMENTARY SCHOOL: 50-01-08-03-0-002-020

BARR MIDDLE SCHOOL: 50-01-08-03-0-004-022

MILLER ELEMENTARY SCHOOL: 50-01-08-03-0-001-026

MAINTENANCE BUILDING: 50-01-08-03-7-007-002

OUTDOOR EDUCATION CENTER: 50-01-08-03-7-012-004

**Project Address:**

Various

**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.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**BOND**

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: ☒ None ☐ See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

**SURETY**

Company: (Corporate Seal)

Signature: \_\_\_\_\_  
Name and  
Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: \_\_\_\_\_  
Name and  
Title:

(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:****OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)

Init.

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User Notes:

(2038059378)

**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

**§ 2** If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

**§ 4** Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

**§ 5** When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

**§ 5.1** Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

**§ 5.2** Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

**§ 5.3** Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

**§ 5.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

**§ 6** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment

or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

**§ 7** If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

**§ 8** If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

**§ 9** The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

**§ 10** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 11** Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 12** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

**§ 13** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### **§ 14 Definitions**

**§ 14.1 Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**§ 14.2 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

**§ 14.3 Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

**§ 14.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

**SURETY**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_



**Payment Bond**

**CONTRACTOR** *(Name and Address):*

**SURETY** *(Name and Principal Place of Business):*

**OWNER** *(Name and Address):*

**CONSTRUCTION CONTRACT**

Date:

Amount:

Description *(Name and Location):*

**BOND**

Date *(Not earlier than Construction Contract Date):*

Amount:

Modifications to this Bond: ☒ None ☐ See Last Page

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

**SURETY**

Company: *(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title:

*(Any additional signatures appear on the last page)*

Signature: \_\_\_\_\_

Name and Title:

*(FOR INFORMATION ONLY - Name, Address and Telephone)*

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE** *(Architect, Engineer or other party):*

§ 1 The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 With respect to the Owner, this obligation shall be null and void if the Contractor:

§ 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

§ 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Section 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

§ 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

§ 4 The Surety shall have no obligation to Claimants under this Bond until:

§ 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

§ 4.2 Claimants who do not have a direct contract with the Contractor:

- .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
- .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

§ 5 If a notice required by Section 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

§ 6 When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:

§ 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

§ 6.2 Pay or arrange for payment of any undisputed amounts.

§ 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Section 4.1 or Section 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 15 DEFINITIONS

§ 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

§ 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

#### § 16 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

##### CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corporate Seal)

##### SURETY

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

# Additions and Deletions Report for AIA® Document A312® – 2010

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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:06:34 ET

## PAGE 1

Nanuet Union Free School District  
101 Church Street  
Nanuet, NY 10954

Contractor to input below information

Project Name: **NANUET BOND PROJECTS PHASE 5**

HIGHVIEW ELEMENTARY SCHOOL: 50-01-08-03-0-002-020

BARR MIDDLE SCHOOL: 50-01-08-03-0-004-022

MILLER ELEMENTARY SCHOOL: 50-01-08-03-0-001-026

MAINTENANCE BUILDING: 50-01-08-03-7-007-002

OUTDOOR EDUCATION CENTER: 50-01-08-03-7-012-004

### Project Address:

Various

...

Modifications to this Bond:

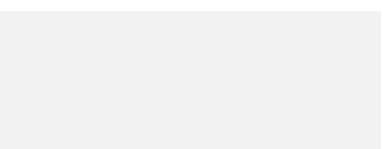
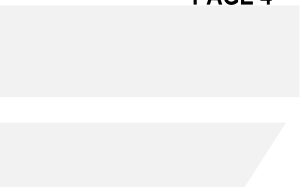
☒

None

☐

See Section 16

## PAGE 2



**Payment Bond**

**CONTRACTOR** *(Name and Address):*

**SURETY** *(Name and Principal Place of Business):*

**OWNER** *(Name and Address):*

**CONSTRUCTION CONTRACT**

Date:

Amount:

Description (Name and Location):

**BOND**

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond:

☒

None

☐

See Last Page

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

**SURETY**

Company: *(Corporate Seal)*

Signature:

Name and Title:

*(Any additional signatures appear on the last page)*

Signature:

Name and Title:

*(FOR INFORMATION ONLY - Name, Address and Telephone)*

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE** *(Architect, Engineer or other party):*

§ 1 The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 With respect to the Owner, this obligation shall be null and void if the Contractor:

§ 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

§ 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Section 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

§ 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

§ 4 The Surety shall have no obligation to Claimants under this Bond until:

§ 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

§ 4.2 Claimants who do not have a direct contract with the Contractor:

- .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
- .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

§ 5 If a notice required by Section 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

§ 6 When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:

§ 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

§ 6.2 Pay or arrange for payment of any undisputed amounts.

§ 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Section 4.1 or Section 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

**§ 15 DEFINITIONS**

§ 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

§ 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**§ 16 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature:  
Name and Title:  
Address:

**SURETY**

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature:  
Name and Title:  
Address:



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

***AIA® Document D401™ – 2003***

I, David Short, 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 15:06:34 ET on 02/07/2024 under Order No. 2114442937 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A312™ – 2010, Performance Bond, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*

## **SECTION 00 90 01 - RESCUE REGULATIONS (EXCERPT OF CONTRACTORS RESPONSIBILITIES)**

### **PART 1 - GENERAL**

#### **1.1 NYSSSED RESCUE REGULATIONS - Uniform Safety Standards for School Construction and Maintenance Projects**

- A. These regulations are the responsibility of each contractor and his/her subcontractor(s)
1. The occupied portion of any school building shall always comply with the minimum requirements necessary to maintain a certificate of occupancy."
  2. All building areas to be disturbed during this construction project have been tested for lead and asbestos. All pertinent information has been included in this project specification and/or in the drawings
  3. General safety and security standards for construction projects.
    - a. All construction materials shall be stored in a safe and secure manner.
    - b. Fences around construction supplies or debris shall be maintained.
    - c. Gates shall always be locked unless a worker is in attendance to prevent unauthorized entry.
    - d. 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.
    - e. Workers shall be required to wear photo-identification badges at all times for identification and security purposes while working at occupied sites."
  4. Separation of construction areas from occupied spaces. Construction areas which are under the control of a contractor and therefore not occupied by district staff or students 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 containment barriers must be made to prevent exposure to dust or contaminants. Gypsum board must be used in exit ways or other areas that require fire rated separation. Heavy duty plastic sheeting may be used only for a vapor, fine dust or air infiltration barrier, and shall not be used to separate occupied spaces from construction areas.
    - a. 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 students or school staff.
    - b. 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.
    - c. All occupied parts of the building affected by renovation activity shall be cleaned at the close of each workday. School buildings occupied during a construction project shall maintain required health, safety and educational capabilities at all times that classes are in session."
  5. Each prime contractor shall develop a plan detailing how exiting required by the applicable building code will be maintained throughout the duration of the construction project. Refer to Summary of Work for scheduling and phasing. Provide site logistics plan indicating

temporary partitions separating areas of work from the rest of the school building. Temporary partitions affecting building egress and exiting shall be submitted to the architect for review and approval.

6. Each prime contractor shall develop a plan detailing how adequate ventilation will be maintained throughout the duration of the construction project.
7. 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 or affected building spaces are not occupied or acoustical abatement measures shall be taken."
8. The contractor shall be responsible for the control of chemical fumes, gases, and other contaminants produced by welding, gasoline or diesel engines, roofing, paving, painting, etc. to ensure they do not enter occupied portions of the building or air intakes."
9. The contractor shall be responsible to ensure that 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 manufacturers recommendations before a space can be occupied."
10. Large and small asbestos abatement projects as defined by 12NYCRR56 shall not be performed while the building is occupied". Note, It is our interpretation that the term "building", as referenced in this section, means a wing or major section of a building that can be completely isolated from the rest of the building with sealed non combustible construction. The isolated portion of the building must contain exits that do not pass through the occupied portion and ventilation systems must be physically separated and sealed at the isolation barrier.
11. Exterior work such as roofing, flashing, siding, or soffit work may be performed on occupied buildings provided proper variances are in place as required and complete isolation of ventilation systems and at windows is provided. Care must be taken to schedule work so that classes are not disrupted by noise or visual distraction.
12. All areas scheduled for work have been examined for lead-containing materials. Results of these tests are available by contacting Croton Harmon Union Free School District, Paul Gibbons, Director of School Facilities, Operations & Maintenance, at 914.271-6109. No work of this contract anticipates disturbance to any surrounding materials that may have been identified as "lead-containing".

## **PART 2 - PRODUCTS (Not Applicable)**

## **PART 3 - EXECUTION (Not Applicable)**

**END OF SECTION 00 90 01**

## SECTION 01 32 33 - PHOTOGRAPHIC DOCUMENTATION

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

#### 1.2 SUMMARY

- A. Section includes administrative and procedural requirements for the following:
  - 1. Preconstruction photographs.
  - 2. Periodic construction photographs.
  - 3. Final completion construction photographs.
    - a. Name of Contractor.
    - b. Date photograph was taken.
    - c. Description of vantage point, indicating location, direction (by compass point), and elevation or story of construction.
    - d. Unique sequential identifier keyed to accompanying key plan.

#### 1.3 USAGE RIGHTS

- A. Obtain and transfer copyright usage rights from photographer to Owner for unlimited reproduction of photographic documentation.

### PART 2 - PRODUCTS

#### 2.1 PHOTOGRAPHIC MEDIA

- A. Digital Images: Provide images in JPG format, produced by a digital camera with minimum sensor size of 8 megapixels, and at an image resolution of not less than 3200 by 2400 pixels.

### PART 3 - EXECUTION

#### 3.1 CONSTRUCTION PHOTOGRAPHS

- A. General: Take photographs using the maximum range of depth of field, and that are in focus, to clearly show the Work. Photographs with blurry or out-of-focus areas will not be accepted.

1. Maintain key plan with each set of construction photographs that identifies each photographic location.
- B. Digital Images: Submit digital images exactly as originally recorded in the digital camera, without alteration, manipulation, editing, or modifications using image-editing software.
  1. Date and Time: Include date and time in file name for each image.
  2. Field Office Images: Maintain one set of images accessible in the field office at Project site, available at all times for reference. Identify images in the same manner as those submitted to Architect and Construction Manager.
- C. Preconstruction Photographs: Before commencement of excavation take photographs of Project site and surrounding properties, including existing items to remain during construction, from different vantage points, as directed by Architect and Construction Manager.
  1. Flag construction limits before taking construction photographs.
  2. Take 20 photographs to show existing conditions adjacent to property before starting the Work.
  3. Take 20 photographs of existing buildings either on or adjoining property to accurately record physical conditions at start of construction.
  4. Take additional photographs as required to record settlement or cracking of adjacent structures, pavements, and improvements.
- D. Periodic Construction Photographs: Take 20 photographs weekly, with timing each month adjusted to coincide with the cutoff date associated with each Application for Payment. Select vantage points to show status of construction and progress since last photographs were taken.
- E. Architect and Construction Manager-Directed Construction Photographs: From time to time, Architect and Construction Manager will instruct photographer about number and frequency of photographs and general directions on vantage points. Select actual vantage points and take photographs to show the status of construction and progress since last photographs were taken.
- F. Time-Lapse Sequence Construction Photographs: Take 20 photographs as indicated, to show status of construction and progress since last photographs were taken.
  1. Frequency: Take photographs weekly, with timing each month adjusted to coincide with the cutoff date associated with each Application for Payment.
  2. Vantage Points: Following suggestions by Architect and Construction Manager and Contractor, photographer to select vantage points. During each of the following construction phases, take not less than two of the required shots from same vantage point each time to create a time-lapse sequence as follows:
    - a. Commencement of the Work, through completion of subgrade construction.
    - b. Above-grade structural framing.
    - c. Exterior building enclosure.
    - d. Interior Work, through date of Substantial Completion.
- G. Final Completion Construction Photographs: Take 20 color photographs after date of Substantial Completion for submission as project record documents. Architect and Construction Manager will inform photographer of desired vantage points.

1. Do not include date stamp.

END OF SECTION 01 32 33

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## **SECTION 01 4200 – REFERENCES STANDARDS AND DEFINITIONS**

### **PART 1 - GENERAL**

#### **1.1 RELATED DOCUMENTS**

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

#### **1.2 DEFINITIONS**

- A. General: Basic contract definitions are included in the Conditions of the Contract.
- B. "Indicated": The term "indicated" refers to graphic representations, notes, or schedules on the Drawings, or other paragraphs or Schedules in the Specifications, and similar requirements in the Contract Documents. Terms such as "shown," "noted," "scheduled," and "specified" are used to help the reader locate the reference. Location is not limited.
- C. "Directed": Terms such as "directed," "requested," "authorized," "selected," "approved," "required," and "permitted" mean directed by the Architect, requested by the Architect, and similar phrases.
- D. "Approved": The term "approved," when used in conjunction with the Architect's action on the Contractor's submittals, applications, and requests, is limited to the Architect's duties and responsibilities as stated in the Conditions of the Contract.
- E. "Regulations": The term "regulations" includes laws, ordinances, statutes, and lawful orders issued by authorities having jurisdiction, as well as rules, conventions, and agreements within the construction industry that control performance of the Work.
- F. "Furnish": The term "furnish" means supply and deliver to the Project Site, ready for unloading, unpacking, assembly, installation, and similar operations.
- G. "Install": The term "install" describes operations at the Project Site including the actual unloading, unpacking, assembly, erecting, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.
- H. "Provide": The term "provide" means to furnish and install, complete and ready for the intended use.
- I. "Installer": An installer is the Contractor or another entity engaged by the Contractor, either as an employee, subcontractor, or contractor of lower tier, to perform a particular construction activity, including installation, erection, application, or similar operations. Installers are required to be experienced in the operations they are engaged to perform.
  - 1. The term "experienced," when used with the term "installer," means having a minimum of 5 previous projects similar in size and scope to this Project, being familiar with the special requirements indicated, and having complied with requirements of authorities having jurisdiction.
  - 2. Trades: Using terms such as "carpentry" does not imply that certain construction activities must be performed by accredited or unionized individuals of a corresponding generic name, such as "carpenter." It also does not imply that



requirements specified apply exclusively to tradespersons of the corresponding generic name.

3. Assigning Specialists: Certain Sections of the Specifications require that specific construction activities shall be performed by specialists who are recognized experts in those operations. The specialists must be engaged for those activities, and their assignments are requirements over which the Contractor has no option. However, the ultimate responsibility for fulfilling contract requirements remains with the Contractor.

- a. This requirement shall not be interpreted to conflict with enforcing building codes and similar regulations governing the Work. It is also not intended to interfere with local trade-union jurisdictional settlements and similar conventions.

- J. "Project Site" is the space available to the Contractor for performing construction activities, either exclusively or in conjunction, with others performing other work as part of the Project. The extent of the Project Site is shown on the Drawings and may or may not be identical with the description of the land on which the Project is to be built.

- K. "Testing Agencies": A testing agency is an independent entity engaged to perform specific inspections or tests, either at the Project Site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.

### 1.3 SPECIFICATION FORMAT AND CONTENT EXPLANATION

- A. Specification Format: These Specifications are organized into Divisions and Sections based on CSI's 33-Division format and MasterFormat's numbering system.

- B. Specification Content: This Specification uses certain conventions regarding the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations or circumstances. These conventions are explained as follows:

1. Abbreviated Language: Language used in Specifications and other Contract Documents is abbreviated. Words and meanings shall be interpreted as appropriate. Words implied, but not stated, shall be interpolated as the sense requires. Singular words will be interpreted as plural and plural words interpreted as singular where applicable as the context of the Contract Documents indicates.
    2. Streamlined Language: The Specifications generally use the imperative mood and streamlined language. Requirements expressed in the imperative mood are to be performed by the Contractor. At certain locations in the Text, subjective language is used for clarity to describe responsibilities that must be fulfilled indirectly by the Contractor or by others when so noted.

- a. The words "shall be" are implied where a colon (:) is used within a sentence or phrase.

### 1.4 INDUSTRY STANDARDS

- A. Applicability of Standards: Except where the Contract Documents include more stringent requirements, applicable construction industry standards have the same force and effect

as if bound or copied directly into the Contract Documents to the extent referenced. Such standards are made a part of the Contract Documents by reference.

- B. Publication Dates: Comply with the standards in effect as of the date of the Contract Documents.
- C. Conflicting Requirements: Where compliance with two or more standards is specified and the standards establish different or conflicting requirements for minimum quantities or quality levels, comply with the most stringent requirement. Refer to the Architect before proceeding for a decision on requirements that are different but apparently equal, and where it is uncertain which requirement is the most stringent.
1. Minimum Quantity or Quality Levels: The quantity or quality level shown or specified shall be the minimum acceptable. The actual installation may comply exactly with the minimum quantity or quality specified, or it may exceed the minimum within reasonable limits. To comply with these requirements, indicated numeric values are minimum or maximum, as appropriate, for the context of the requirements. Refer uncertainties to the Architect for a decision before proceeding.
- D. Copies of Standards: Each entity engaged in construction on the Project is required to be familiar with industry standards applicable to its construction activity. Copies of applicable standards are not bound with the Contract Documents.
1. Where copies of standards are needed to perform a required construction activity, the Contractor shall obtain copies directly from the publication source.
- E. Abbreviations and Names: Trade association names and titles of general standards are frequently abbreviated. Where such acronyms or abbreviations are used in the Specifications or other Contract Documents, they mean the recognized name of the trade association, standards-generating organization, authorities having jurisdiction, or other entity applicable to the context of the text provision. Refer to Gale Research Co.'s "Encyclopedia of Associations," available in most libraries.
- F. Abbreviations and Names: Trade association names and titles of general standards are frequently abbreviated. The following acronyms or abbreviations, as referenced in the Contract Documents, are defined to mean the associated names. Names and addresses are subject to change and are believed, but are not assured, to be accurate and up-to-date as of the date of the Contract Documents.

AA	Aluminum Association 900 19th St., NW, Suite 300 Washington, DC 20006	(202) 862-5104
AABC	Associated Air Balance Council 1518 K St., NW Washington, DC 20005	(202) 737-0202

AAMA	American Architectural Manufacturers Assoc. 1540 E. Dundee Road, Suite 310 Palatine, IL 60067	(708) 202-1350
AAN	American Association of Nurserymen 1250 Eye St., NW, Suite 500 Washington, DC 20005	(202) 789-2900
AASHTO	American Association of State Highway and Transportation Officials 444 North Capitol St., Suite 24 Washington, DC 20001	(202) 624-5800
AATCC	American Association of Textile Chemists and Colorists P.O. Box 12215 Research Triangle Park, NC 27709-2215	(919) 549-8141
ABMA	American Bearing Manufacturers Assoc. 1101 Connecticut Ave., NW, Suite 700 Washington, DC 20036	(202) 429-5155
ACI	American Concrete Institute P.O. Box 19150 Detroit, MI 48219	(313) 532-2600
ACIL	American Council of Independent Laboratories 1629 K St., NW Washington, DC 20006	(202) 887-5872
ACPA	American Concrete Pipe Assoc. 8300 Boone Blvd., Suite 400 Vienna, VA 22182	(703) 821-1990
ADC	Air Diffusion Council One Illinois Center, Suite 200 111 East Wacker Dr. Chicago, IL 60601-4298	(312) 616-0800
AFBMA	Anti-Friction Bearing Manufacturers Assoc. (Now ABMA)	
AFPA	American Forest and Paper Assoc. (American Wood Council of the) 2nd Floor, 1250 Connecticut Ave., NW Washington, DC 20036	(202) 463-2455
AGA	American Gas Assoc. 1515 Wilson Blvd. Arlington, VA 22209	(703) 841-8400

AHA	American Hardboard Assoc. 1210 W. Northwest Highway Palatine, IL 60067	(708) 934-8800
AHAM	Association of Home Appliance Manufacturers 20 N. Wacker Dr., Suite 1500 Chicago, IL 60606	(312) 984-5800
AI	Asphalt Institute Research Park Dr. P.O. Box 14052 Lexington, KY 40512-4052	(606) 288-4960
AIA	The American Institute of Architects 1735 New York Ave., NW Washington, DC 20006	(202) 626-7300
AIA	American Insurance Assoc. 1130 Connecticut Ave., NW, Suite 1000 Washington, DC 20036	(202) 828-7100
AIHA	American Industrial Hygiene Assoc. 2700 Prosperit Ave., Suite 250 Fairfax, VA 22031	(703) 849-8888
AISC	American Institute of Steel Construction One East Wacker Dr., Suite 3100 Chicago, IL 60601-2001	(312) 670-2400
AISI	American Iron and Steel Institute 1101 17th St., NW Washington, DC 20036-4700	(202) 452-7100
AITC	American Institute of Timber Construction 7012 S. Revere Parkway, #140 Englewood, CO 80112	(303) 792-9559
ALI	Associated Laboratories, Inc. c/o HOH Chemicals 500 S. Vermont St. Palatine, IL 60067	(708) 358-7400
ALSC	American Lumber Standards Committee P.O. Box 210 Germantown, MD 20875	(301) 972-1700
AMCA	Air Movement and Control Assoc. 30 W. University Dr. Arlington Heights, IL 60004-1893	(708) 394-0150
ANSI	American National Standards Institute	

	11 West 42nd St., 13th Floor New York, NY 10036	(212) 642-4900
AOAC	AOAC International 2200 Wilson Blvd., Suite 400 Arlington, VA 22201-3301	(703) 522-3032
AOSA	Association of Official Seed Analysts California State Seed Laboratory 1220 N St. Sacramento, CA 95814	(916) 445-4521
APA	American Plywood Assoc. P.O. Box 11700 Tacoma, WA 98411	(206) 565-6600
API	American Petroleum Institute 1220 L St., NW Washington, DC 20005	(202) 682-8000
ARI	Air-Conditioning and Refrigeration Institute 4301 Fairfax Dr., Suite 425 Arlington, VA 22203	(703) 524-8800
ARMA	Asphalt Roofing Manufacturers Assoc. 6000 Executive Dr., Suite 201 Rockville, MD 20852-3803	(301) 231-9050
ASA	Acoustical Society of America 500 Sunnyside Blvd. Woodbury, NY 11797	(516) 576-2360
ASC	Adhesive and Sealant Council 1627 K St., NW, Suite 1000 Washington, DC 20006-1707	(202) 452-1500
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers 1791 Tullie Circle, NE Atlanta, GA 30329	(404) 636-8400
ASME	American Society of Mechanical Engineers 345 East 47th St. New York, NY 10017	(212) 705-7722
ASPA	American Sod Producers Assoc. 1855-A Hicks Rd. Rolling Meadows, IL 60008	(708) 705-9898
ASPE	American Society of Plumbing Engineers 3617 Thousand Oaks Blvd., Suite 210	

	Westlake, CA 91362	(805) 495-7120
ASSE	American Society of Sanitary Engineering P.O. Box 40362 Bay Village, OH 44140	(216) 835-3040
ASTM	American Society for Testing and Materials 1916 Race St. Philadelphia, PA 19103-1187	(215) 299-5400
ATIS	Alliance for Telecommunications Industry Solutions 1200 G St., NW, Suite 500 Washington, DC 20005	(202) 628-6380
AWCMA	American Window Covering Manufacturers Assoc. (Now WCMA)	
AWI	Architectural Woodwork Institute P.O. Box 1550 13924 Braddock Rd., No. 100 Centerville, VA 22020	(703) 222-1100
AWPA	American Wood Preservers' Assoc. P.O. Box 286 Woodstock, MD 21163-0286	(410) 465-3169
AWPB	American Wood Preservers' Bureau (This organization is now defunct.)	
AWS	American Welding Society 550 LeJeune Rd., NW Miami, FL 33126	(305) 443-9353
AWWA	American Water Works Assoc. 6666 W. Quincy Ave. Denver, CO 80235	(303) 794-7711
BANC	Brick Association of North Carolina P.O. Box 13290 Greensboro, NC 27415-3290	(910) 273-5566
BHMA	Builders' Hardware Manufacturers Assoc. 355 Lexington Ave., 17th Floor New York, NY 10017	(212) 661-4261
BIA	Brick Institute of America 11490 Commerce Park Dr. Reston, VA 22091	(703) 620-0010

BIFMA	The Business and Institutional Furniture Manufacturer's Association 2680 Horizon Dr., SE, Suite A1 Grand Rapids, MI 49546-7500	(616) 285-3963
CAGI	Compressed Air and Gas Institute c/o Thomas Associates, Inc. 1300 Sumner Ave. Cleveland, OH 44115-2851	(216) 241-7333
CAUS	Color Association of the United States 409 W. 44th St. New York, NY 10036	(212) 582-6884
CBHF	State of California, Dept. of Consumer Affairs Bureau of Home Furnishings and Thermal Insulation 3485 Orange Grove Ave. North Highland, CA 95660-5595	(800) 952-5210
CBM	Certified Ballast Manufacturers Assoc. 1422 Euclid Ave., Suite 402 Cleveland, OH 44115-2851	(216) 241-0711
CCC	Carpet Cushion Council P.O. Box 546 Riverside, CT 06878	(203) 637-1312
CDA	Copper Development Association Inc. 260 Madison Ave., 16th Floor New York, NY 10016	(212) 251-7200
CFFA	Chemical Fabrics & Film Association, Inc. c/o Thomas Associates, Inc. 1300 Sumner Ave. Cleveland, OH 44115-2851	(216) 241-7333
CGA	Compressed Gas Assoc. 1725 Jefferson Davis Highway, Suite 1004 Arlington, VA 22202-4100	(703) 412-0900
CISCA	Ceiling and Interior Systems Construction Assoc. 579 W. North Ave., Suite 301 Elmhurst, IL 60126	(708) 833-1919
CISPI	Cast Iron Soil Pipe Institute 5959 Shallowford Rd., Suite 419 Chattanooga, TN 37421	(615) 892-0137
CRI	Carpet and Rug Institute P.O. Box 2048 Dalton, GA 30722	(706) 278-3176

CRSI	Concrete Reinforcing Steel Institute 933 N. Plum Grove Rd. Schaumburg, IL 60173	(708) 517-1200
CTI	Ceramic Tile Institute of America 12061 West Jefferson Blvd. Culver City, CA 90230	(310) 574-7800
DHI	Door and Hardware Institute 14170 Newbrook Dr. Chantilly, VA 22021-2223	(703) 222-2010
DIPRA	Ductile Iron Pipe Research Assoc. 245 Riverchase Parkway East, Suite O Birmingham, AL 35244	(205) 988-9870
DLPA	Decorative Laminate Products Assoc. 13924 Braddock Rd. Centreville, VA 22020	(800) 684-3572
ECSA	Exchange Carriers Standards Assoc. (Now ATIS)	
EIA	Electronic Industries Assoc. 2001 Pennsylvania Ave., NW Washington, DC 20006-1813	(202) 457-4900
EIMA	EIFS Industry Manufacturers Assoc. 2759 State Road 580, Suite 112 Clearwater, FL 34621	(813) 726-6477
EJMA	Expansion Joint Manufacturers Assoc. 25 N. Broadway Tarrytown, NY 10591	(914) 332-0040
ETL	ETL Testing Laboratories, Inc. P.O. Box 2040 3933 Route 11, Industrial Park Cortland, NY 13045	(607) 753-6711
FCI	Fluid Controls Institute P.O. Box 9036 Morristown, NJ 07960	(201) 829-0990
FCIB	Floor Covering Installation Board 310 Holiday Ave. Dalton, GA 30720	(706) 226-5488
FGMA	Flat Glass Marketing Assoc. White Lakes Professional Bldg.	



	3310 S.W. Harrison St. Topeka, KS 66611-2279	(913) 266-7013
FM	Factory Mutual Systems 1151 Boston-Providence Turnpike P.O. Box 9102 Norwood, MA 02062	(617) 762-4300
FTI	Facing Tile Institute P.O. Box 8880 Canton, OH 44711	(216) 488-1211
GA	Gypsum Association 810 First St., NE, Suite 510 Washington, DC 20002	(202) 289-5440
HEI	Heat Exchange Institute c/o Thomas Associates, Inc. 1300 Sumner Ave. Cleveland, OH 44115-2851	(216) 241-7333
HI	Hydronics Institute P.O. Box 218 35 Russo Place Berkeley Heights, NJ 07922	(908) 464-8200
HI	Hydraulic Institute 9 Sylvan Way Parsippany, NJ 07054-3802	(201) 267-9700
HMA	Hardwood Manufacturers Assoc. 400 Penn Center Blvd. Pittsburgh, PA 15235	(412) 829-0770
HPVA	Hardwood Plywood and Veneer Assoc. 1825 Michael Farraday Dr. P.O. Box 2789 Reston, VA 22090	(703) 435-2900
IBD	Institute of Business Designers 341 Merchandise Mart Chicago, IL 60654	(312) 467-1950
ICEA	Insulated Cable Engineers Association, Inc. P.O. Box 440 South Yarmouth, MA 02664	(508) 394-4424
IEC	International Electrotechnical Commission (Available from ANSI) 1430 Broadway	

	New York, NY 10018	(212) 354-3300
IEEE	Institute of Electrical and Electronic Engineers 345 E. 47th St. New York, NY 10017	(212) 705-7900
IESNA	Illuminating Engineering Society of North America 345 E. 47th St. New York, NY 10017	(212) 705-7913
IGCC	Insulating Glass Certification Council c/o ETL Testing Laboratories, Inc. P.O. Box 2040 Route 11, Industrial Park Cortland, NY 13045	(607) 753-6711
ILI	Indiana Limestone Institute of America Stone City Bank Building, Suite 400 Bedford, IN 47421	(812) 275-4426
IMSA	International Municipal Signal Assoc. 165 E. Union St. Newark, NY 14513	(315) 331-2182
IRI	Industrial Risk Insurers P.O. Box 5010 85 Woodland St. Hartford, CT 06102-5010	(203) 520-7300
ISA	Instrument Society of America P.O. Box 12277 67 Alexander Dr. Research Triangle Park, NC 27709	(919) 549-8411
KCMA	Kitchen Cabinet Manufacturers Assoc. 1899 Preston White Dr. Reston, VA 22091-4326	(703) 264-1690
LIA	Lead Industries Association, Inc. 295 Madison Ave. New York, NY 10017	(212) 578-4750
LPI	Lightning Protection Institute 3365 N. Arlington Heights Rd., Suite J Arlington Heights, IL 60004	(800) 488-6864
MBMA	Metal Building Manufacturer's Assoc. c/o Thomas Associates, Inc. 1300 Sumner Ave. Cleveland, OH 44115-2851	(216) 241-7333

MCAA	Mechanical Contractors Association of America 1385 Piccard Dr. Rockville, MD 20850-4329	(301) 869-5800
MFMA	Maple Flooring Manufacturers Assoc. 60 Revere Dr., Suite 500 Northbrook, IL 60062	(708) 480-9138
MIA	Marble Institute of America 33505 State St. Farmington, MI 48335	(810) 476-5558
ML/SFA	Metal Lath/Steel Framing Assoc. (A Division of the National Association of Architectural Metal Manufacturers) 600 S. Federal St., Suite 400 Chicago, IL 60605	(312) 922-6222
MSS	Manufacturers Standardization Society of the Valve and Fittings Industry 127 Park St., NE Vienna, VA 22180	(703) 281-6613
NAA	National Arborist Assoc. The Meeting Place Mall Route 101, P.O. Box 1094 Amherst, NH 03031-1094	(603) 673-3311
NAAMM	National Association of Architectural Metal Manufacturers 600 S. Federal St., Suite 400 Chicago, IL 60605	(312) 922-6222
NAIMA	North American Insulation Manufacturers Assoc. 44 Canal Center Plaza, Suite 310 Alexandria, VA 22314	(703) 684-0084
NAPA	National Asphalt Pavement Assoc. NAPA Building 5100 Forbes Blvd. Lanham, MD 20706-4413	(301) 731-4748
NAPF	National Association of Plastic Fabricators (Now DLPA)	
NBGQA	National Building Granite Quarries Assoc. P.O. Box 482 Barre, VT 05641	(802) 476-3115

NBHA	National Builders Hardware Assoc. (Now DHI)	
NCMA	National Concrete Masonry Assoc. 2302 Horse Pen Rd. Herndon, VA 22071-3406	(703) 713-1900
NCPI	National Clay Pipe Institute P.O. Box 759 253-80 Center St. Lake Geneva, WI 53147	(414) 248-9094
NCRPM	National Council on Radiation Protection and Measurements 7910 Woodmont Ave., Suite 800 Bethesda, MD 20814	(301) 657-2652
NCSPA	National Corrugated Steel Pipe Association 1255 23rd St., NW, Suite 850 Washington, DC 20037	(202) 452-1700
NEC	National Electrical Code (from NFPA)	
NECA	National Electrical Contractors Assoc. 3 Bethesda Metro Center, Suite 1100 Bethesda, MD 20814	(301) 657-3110
NEII	National Elevator Industry, Inc. 185 Bridge Plaza, North Fort Lee, NJ 07024	(201) 944-3211
NEMA	National Electrical Manufacturers Assoc. 2101 L St., NW, Suite 300 Washington, DC 20037	(202) 457-8400
NETA	International Electrical Testing Assoc. P.O. Box 687 Morrison, CO 80465	(303) 697-8441
NFPA	National Fire Protection Assoc. One Batterymarch Park P.O. Box 9101 Quincy, MA 02269-9101	(617) 770-3000 (800) 344-3555
NFPA	National Forest Products Assoc. (Now AFPA)	
NHLA	National Hardwood Lumber Assoc. P.O. Box 34518 Memphis, TN 38184-0518	(901) 377-1818

NKCA	National Kitchen Cabinet Assoc. (Now KCMA)	
NLGA	National Lumber Grades Authority 4400 Dominion St., Suite 103 Burnaby, BC V5G 4G3	(604) 451-7323
NOFMA	National Oak Flooring Manufacturers Assoc. P.O. Box 3009 Memphis, TN 38173-0009	(901) 526-5016
NPA	National Particleboard Assoc. 18928 Premiere Ct. Gaithersburg, MD 20879	(301) 670-0604
NPCA	National Paint and Coatings Assoc. 1500 Rhode Island Ave., NW Washington, DC 20005	(202) 462-6272
NRCA	National Roofing Contractors Assoc. 10255 W. Higgins Rd., Suite 600 Rosemont, IL 60018-5607	(708) 299-9070
NSF	National Sanitation Foundation 3475 Plymouth Rd. P.O. Box 130140 Ann Arbor, MI 48113-0140	(313) 769-8010
NSSEA	National School Supply and Equipment Assoc. 8300 Colesville Rd., No. 250 Silver Spring, MD 20910	(301) 495-0240
NTMA	National Terrazzo and Mosaic Assoc. 3166 Des Plaines Ave., Suite 132 Des Plaines, IL 60018	(708) 635-7744
NWMA	National Woodwork Manufacturers Assoc. (Now NWWDA)	
NWWDA	National Wood Window and Door Assoc. 1400 E. Touhy Ave., #G54 Des Plaines, IL 60018	(708) 299-5200 (800) 223-2301
PATMI	Power Actuated Tool Manufacturers' Institute, Inc. 1000 Fairgrounds Rd., Suite 200 St. Charles, MO 63301	(314) 947-6610
PCA	Portland Cement Assoc. 5420 Old Orchard Rd. Skokie, IL 60077	(708) 966-6200

PCI	Precast/Prestressed Concrete Institute 175 W. Jackson Blvd. Chicago, IL 60604	(312) 786-0300
PDI	Plumbing and Drainage Institute c/o Sol Baker 1106 W. 77th St., South Dr. Indianapolis, IN 46260	(317) 251-6970
PEI	Porcelain Enamel Institute 102 Woodmont Blvd., Suite 360 Nashville, TN 38205	(615) 385-0758
RFCI	Resilient Floor Covering Institute 966 Hungerford Dr., Suite 12-B Rockville, MD 20805	(301) 340-8580
RIS	Redwood Inspection Service 405 Enfrente Dr., Suite 200 Novato, CA 94949	(415) 382-0662
RMA	Rubber Manufacturers Assoc. 1400 K St., NW Washington, DC 20005	(202) 682-4800
SDI	Steel Deck Institute P.O. Box 9506 Canton, OH 44711	(216) 493-7886
SDI	Steel Door Institute 30200 Detroit Rd. Cleveland, OH 44145	(216) 889-0010
SGCC	Safety Glazing Certification Council c/o ETL Testing Laboratories Route 11, Industrial Park Cortland, NY 13045	(607) 753-6711
SHLMA	Southern Hardwood Lumber Manufacturers Assoc. (Now HMA)	
SIGMA	Sealed Insulating Glass Manufacturers Assoc. 401 N. Michigan Ave. Chicago, IL 60611	(312) 644-6610
SJI	Steel Joist Institute 1205 48th Avenue North, Suite A	

	Myrtle Beach, SC 29577	(803) 449-0487
SMA	Screen Manufacturers Assoc. 3950 Lake Shore Dr., Suite 502-A Chicago, IL 60613-3431	(312) 525-2644
SMACNA	Sheet Metal and Air Conditioning Contractors National Assoc. 4201 Lafayette Center Dr. Chantilly, VA 22021	(703) 803-2980
SPIB	Southern Pine Inspection Bureau 4709 Scenic Highway Pensacola, FL 32504	(904) 434-2611
SPRI	Single Ply Roofing Institute 20 Walnut St. Wellesley Hills, MA 02181	(617) 237-7879
SSPC	Steel Structures Painting Council 4516 Henry St. Pittsburgh, PA 15213	(412) 687-1113
SSPMA	Sump and Sewage Pump Manufacturers Assoc. P.O. Box 647 Northbrook, IL 60065-0647	(708) 559-9233
STI	Steel Tank Institute 570 Oakwood Rd. Lake Zurich, IL 60047	(708) 438-8265
SWI	Steel Window Institute c/o Thomas Associates, Inc. 1300 Sumner Ave. Cleveland, OH 44115-2851	(216) 241-7333
SWPA	Submersible Wastewater Pump Assoc. 600 S. Federal St., Suite 400 Chicago, IL 60605	(312) 922-6222
TCA	Tile Council of America P.O. Box 326 Princeton, NJ 08542-0326	(609) 921-7050
TIMA	Thermal Insulation Manufacturers Assoc. (This Organization is now defunct. See NAIMA)	
TPI	Truss Plate Institute 583 D'Onofrio Dr., Suite 200 Madison, WI 53719	(608) 833-5900

UL	Underwriters Laboratories 333 Pfingsten Rd. Northbrook, IL 60062	(708) 272-8800
UNI	Uni-Bel PVC Pipe Assoc. 2655 Villa Creek Dr., Suite 155 Dallas, TX 75234	(214) 243-3902
USP	U.S. Pharmacopoeial Convention 12601 Twinbrook Parkway Rockville, MD 20852	(301) 881-0666
WA	Wallcoverings Assoc. 401 N. Michigan Ave. Chicago, IL 60611-4267	(312) 644-6618
WCLIB	West Coast Lumber Inspection Bureau P.O. Box 23145 Portland, OR 97281	(503) 639-0651
WCMA	Window Covering Manufacturers Assoc. 355 Lexington Ave., 17th Floor New York, NY 10017	(212) 661-4261
WIC	Woodwork Institute of California P.O. Box 11428 Fresno, CA 93773-1428	(209) 233-9035
WLPDIA	Western Lath, Plaster, Drywall Industries Assoc. (Formerly California Lath & Plaster Assoc.) 8635 Navajo Rd. San Diego, CA 92119	(619) 229-8307
WRI	Wire Reinforcement Institute 1101 Connecticut Ave. NW, Suite 700 Washington, DC 20036-4303	(202) 429-5125
WSC	Water Systems Council 600 S. Federal St., Suite 400 Chicago, IL 60605	(312) 922-6222
WSFI	Wood and Synthetic Flooring Institute 4415 W. Harrison St., Suite 242-C Hillside, IL 60162	(708) 449-2933
WWPA	Western Wood Products Assoc. Yeon Building 522 SW 5th Ave. Portland, OR 97204-2122	(503) 224-3930



WWPA	Woven Wire Products Assoc. 2515 N. Nordica Ave. Chicago, IL 60635	(312) 637-1359
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- G. Federal Government Agencies: Names and titles of federal government standard- or Specification-producing agencies are often abbreviated. The following acronyms or abbreviations referenced in the Contract Documents indicate names of standard- or Specification-producing agencies of the federal government. Names and addresses are subject to change and are believed, but are not assured, to be accurate and up-to-date as of the date of the Contract Documents.

CE	Corps of Engineers (U.S. Department of the Army) Chief of Engineers - Referral Washington, DC 20314	(202) 272-0660
CFR	Code of Federal Regulations (Available from the Government Printing Office) N. Capitol St. between G and H St., NW Washington, DC 20402 (Material is usually first published in the "Federal Register")	(202) 783-3238
CPSC	Consumer Product Safety Commission 5401 Westbard Ave. Bethesda, MD 20207	(800) 638-2772
CS	Commercial Standard (U.S. Department of Commerce) Government Printing Office Washington, DC 20402	(202) 783-3238
DOC	Department of Commerce 14th St. and Constitution Ave., NW Washington, DC 20230	(202) 482-2000
DOT	Department of Transportation 400 Seventh St., SW Washington, DC 20590	(202) 366-4000
EPA	Environmental Protection Agency 401 M St., SW Washington, DC 20460	(202) 382-2090
FAA	Federal Aviation Administration (U.S. Department of Transportation) 800 Independence Ave., SW Washington, DC 20590	(202) 366-4000
FCC	Federal Communications Commission	

	1919 M St., NW Washington, DC 20554	(202) 632-7000
FDA	Food and Drug Administration 5600 Fishers Lane Rockville, MD 20857	(301) 443-1544
FHA	Federal Housing Administration (U.S. Department of Housing and Urban Development) 451 Seventh St., SW Washington, DC 20201	(202) 708-1422
FS	Federal Specification (from GSA) Specifications Unit (WFSIS) 7th and D St., SW Washington, DC 20407	(202) 708-9205
GSA	General Services Administration F St. and 18th St., NW Washington, DC 20405	(202) 708-5082
MIL	Military Standardization Documents (U.S. Department of Defense) Naval Publications and Forms Center 5801 Tabor Ave. Philadelphia, PA 19120	
NIST	National Institute of Standards and Technology (U.S. Department of Commerce) Gaithersburg, MD 20899	(301) 975-2000
OSHA	Occupational Safety and Health Administration (U.S. Department of Labor) 200 Constitution Ave., NW Washington, DC 20210	(202) 219-6091
PS	Product Standard of NBS (U.S. Department of Commerce) Government Printing Office Washington, DC 20402	(202) 783-3238
REA	Rural Electrification Administration (U.S. Department of Agriculture) 14th St. and Independence Ave., SW Washington, DC 20250	(202) 447-2791
USDA	U.S. Department of Agriculture Independence Ave. between 12th St. and 14th	

St., SW  
Washington, DC 20250

(202) 720-2791

USPS

U.S. Postal Service  
475 L'Enfant Plaza, SW  
Washington, DC 20260-0010

(202) 268-2000

1.5 GOVERNING REGULATIONS AND AUTHORITIES

- A. Copies of Regulations: Obtain copies of the following regulations and retain at the Project Site to be available for reference by parties who have a reasonable need.

1.6 SUBMITTALS

- A. Permits, Licenses, and Certificates: For the Owner's records, submit copies of permits, licenses, certifications, inspection reports, releases, jurisdictional settlements, notices, receipts for fee payments, judgments, correspondence, records, and similar documents, established in conjunction with compliance with standards and regulations bearing upon performance of the Work.

PART 2 - PRODUCTS (Not Applicable)

PART 3 - EXECUTION (Not Applicable)

**END OF SECTION 01 4200**

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## **SECTION 014500 - QUALITY REQUIREMENTS**

### **PART 1 - GENERAL**

#### **1.1 RELATED DOCUMENTS**

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

#### **1.2 SUMMARY**

- A. This Section includes administrative and procedural requirements for quality-control services.
- B. Quality-control services include inspections, tests, and related actions, including reports performed by Contractor, by independent agencies, and by governing authorities. They do not include contract enforcement activities performed by Architect.
- C. Inspection and testing services are required to verify compliance with requirements specified or indicated. These services do not relieve Contractor of responsibility for compliance with Contract Document requirements.
- D. Requirements of this Section relate to customized fabrication and installation procedures, not production of standard products.
  1. Specific quality-control requirements for individual construction activities are specified in the Sections that specify those activities. Requirements in those Sections may also cover production of standard products.
  2. Specified inspections, tests, and related actions do not limit Contractor's quality-control procedures that facilitate compliance with Contract Documents. Requirements.
  3. Requirements for Contractor to provide quality-control services required by Architect, Owner, or authorities having jurisdiction are not limited by provisions of this Section.
- E. Related Sections: The following Sections contain requirements that relate to this Section:
  1. Division 1 Section "Cutting and Patching" specifies requirements for repair and restoration of construction disturbed by inspection and testing activities.
  2. Division 1 Section "Submittals" specifies requirements for development of a schedule of required tests and inspections.
- F. Referenced Standards: If compliance with two or more standards is specified and the standards establish different or conflicting requirements, comply with the most stringent requirement. Refer uncertainties to Architect for a decision.
- G. Minimum Quantity or Quality Levels: The quantity or quality level shown or specified shall be the minimum. The actual installation may exceed the minimum within reasonable limits. Indicated numeric values are minimum or maximum, as appropriate, for the context of requirements. Refer uncertainties to Architect for a decision.
- H. Permits, Licenses, and Certificates: For Owner's records, submit copies of permits, licenses, certifications, inspection reports, notices, receipts for fee payments, and similar documents, established for compliance with standards and regulations bearing on performance of the Work.

- I. Testing Agency Qualifications: An independent agency with the experience and capability to conduct testing and inspecting indicated; and where required by authorities having jurisdiction, that is acceptable to authorities.
- J. Retesting/Reinspecting: Regardless of whether original tests or inspections were Contractor's responsibility, provide quality-control services, including retesting and reinspecting, for construction that replaced Work that failed to comply with the Contract Documents.
- K. Testing Agency Responsibilities: Cooperate with Architect and Contractor in performance of duties. Provide qualified personnel to perform required tests and inspections.
  - 1. Promptly notify Architect and Contractor of irregularities or deficiencies in the Work observed during performance of its services.
  - 2. Do not release, revoke, alter, or increase requirements of the Contract Documents or approve or accept any portion of the Work.
  - 3. Do not perform any duties of Contractor.
- L. Associated Services: Cooperate with testing agencies and provide reasonable auxiliary services as requested. Provide the following:
  - 1. Access to the Work.
  - 2. Incidental labor and facilities necessary to facilitate tests and inspections.
  - 3. Adequate quantities of representative samples of materials that require testing and inspecting. Assist agency in obtaining samples.
  - 4. Facilities for storage and field curing of test samples.
  - 5. Security and protection for samples and for testing and inspecting equipment.
- M. Coordination: Coordinate sequence of activities to accommodate required quality-assurance and -control services with a minimum of delay and to avoid necessity of removing and replacing construction to accommodate testing and inspecting.
  - 1. Schedule times for tests, inspections, obtaining samples, and similar activities.

### 1.3 RESPONSIBILITIES

- A. Contractor Responsibilities: Unless otherwise indicated as the responsibility of another identified entity, Contractor shall provide inspections, tests, and other quality-control services specified elsewhere in the Contract Documents and required by authorities having jurisdiction. Costs for these services are included in the Contract Sum.
  - 1. Where individual Sections specifically indicate that certain inspections, tests, and other quality-control services are the Contractor's responsibility, the Contractor shall employ and pay a qualified independent testing agency to perform quality-control services. Costs for these services are included in the Contract Sum.
  - 2. Where individual Sections specifically indicate that certain inspections, tests, and other quality-control services are the Owner's responsibility, the Owner will employ and pay a qualified independent testing agency to perform those services.
  - 3. Where individual Sections specifically indicate that certain inspections, tests, and other quality-control services are the Owner's responsibility, the Owner will engage the services of a qualified independent testing agency to perform those services. Payment for these services will be made from the Inspection and Testing Allowance, as authorized by Change Orders.

- a. Where the Owner has engaged a testing agency for testing and inspecting part of the Work, and the Contractor is also required to engage an entity for the same or related element, the Contractor shall not employ the entity engaged by the Owner, unless agreed to in writing by the Owner.
- B. Retesting: The Contractor is responsible for retesting where results of inspections, tests, or other quality-control services prove unsatisfactory and indicate noncompliance with Contract Document requirements, regardless of whether the original test was Contractor's responsibility.
  1. The cost of retesting construction, revised or replaced by the Contractor, is the Contractor's responsibility where required tests performed on original construction indicated noncompliance with Contract Document requirements.
- C. Associated Services: Cooperate with agencies performing required inspections, tests, and similar services, and provide reasonable auxiliary services as requested. Notify the agency sufficiently in advance of operations to permit assignment of personnel. Auxiliary services required include, but are not limited to, the following.
  1. Provide access to the Work.
  2. Furnish incidental labor and facilities necessary to facilitate inspections and tests.
  3. Take adequate quantities of representative samples of materials that require testing or assist the agency in taking samples.
  4. Provide facilities for storage and curing of test samples.
  5. Deliver samples to testing laboratories.
  6. Provide the agency with a preliminary design mix proposed for use for materials mixes that require control by the testing agency.
  7. Provide security and protection of samples and test equipment at the Project Site.
- D. Duties of the testing Agency: The independent agency engaged to perform inspections, sampling, and testing of materials and construction specified in individual Sections shall cooperate with the Architect, and the Contractor in performance of the agency's duties. The testing agency shall provide qualified personnel to perform required inspections and tests.
  1. The agency shall notify the Architect, and the Contractor promptly of irregularities or deficiencies observed in the Work during performance of its services.
  2. The agency is not authorized to release, revoke, alter or enlarge requirements of the Contract Documents or approve or accept any portion of the Work.
  3. The agency is not authorized to release, revoke, alter or enlarge requirements of the Contract Documents or approve or accept any portion of the Work.
- E. Coordination: Coordinate the sequence of activities to accommodate required services with a minimum of delay.
  1. Coordinate activities to avoid the necessity of removing and replacing construction to accommodate inspections and tests.
  2. The Architect is responsible for scheduling times for inspections tests, taking samples, and similar activities.

#### 1.4 SUBMITTALS

- A. Unless the Contractor is responsible for this service, the independent testing agency shall submit a certified written report, induplicate, of each inspection, test, or similar service through the Contractor.

1. Submit additional copies of each written report directly to the governing authority, when the authority so directs.
2. Report Data: Written reports of each inspection, test, or similar service include, but are not limited to, the following:
  - a. Date of issue.
  - b. Project title and number.
  - c. Name, address, and telephone number of testing agency.
  - d. Dates and locations of samples and tests or inspections.
  - e. Names of individuals making the inspection or test.
  - f. Designation of the Work and test method.
  - g. Identification of product and Specification Section.
  - h. Complete inspection or test data.
  - i. Test results and an interpretations of test results.
  - j. Ambient conditions at the time of sample taking and testing.
  - k. Comments or professional opinion on whether inspected or tested Work complies with Contract document requirements.
  - l. Name and signature of laboratory inspector.
  - m. Recommendations on retesting.

#### 1.5 QUALITY ASSURANCE

- A. Qualifications for Service Agencies: Engage inspection and testing service agencies, including independent testing laboratories, that are pre-qualified as complying with the American Council of Independent Laboratories "Recommended Requirements for Independent Laboratory Qualification" and that specialize in the types of inspections and test to be performed.
  1. Each independent inspection and testing agency engaged on the Project shall be authorized by authorities having jurisdiction to operate in the state where the project is located.

### **PART 2 - PRODUCTS (Not Used)**

### **PART 3 - EXECUTION**

#### 3.1 REPAIR AND PROTECTION

- A. General: Upon completion of inspection, testing, sample taking and similar services, repair damaged construction and restore substrates and finishes. Comply with Contract Document requirements for Division 1 Section "Cutting and Patching."
- B. Protect construction exposed by or for quality-control service activities, and protect repaired construction.
- C. Repair and protection is Contractor's responsibility, regardless of the assignment of responsibility for inspection, testing, or similar services.

**END OF SECTION 014500**



## SECTION 01 60 00 – PRODUCT REQUIREMENTS

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

#### 1.2 SUMMARY

- A. This Section includes administrative and procedural requirements governing the Contractor's selection of products for use in the Project.
  - 1. Single Prime Contract: Provisions of this Section apply to the construction activities of each prime contractor.
- B. Related Sections: The following Sections contain requirements that relate to this Section:
  - 1. Division 1 Section "Electronic Submittal Procedures" specifies requirements for submittal of the Contractor's Construction Schedule and the Submittal Schedule.
  - 2. Division 1 Section "Substitution Procedures" specifies administrative procedures for handling requests for substitutions made after award of the Contract.

#### 1.3 DEFINITIONS

- A. Definitions used in this Article are not intended to change the meaning of other terms used in the Contract Documents, such as "specialties," "systems," "structure," "finishes," "accessories," and similar terms. Such terms are self-explanatory and have well-recognized meanings in the construction industry.
  - 1. "Products" are items purchased for incorporation in the Work, whether purchased for the Project or taken from previously purchased stock. The term "product" includes the terms "material," "equipment," "system," and terms of similar intent.
    - a. "Named Products" are items identified by the manufacturer's product name, including make or model number or other designation, shown or listed in the manufacturer's published product literature, that is current as of the date of the Contract Documents.
  - 2. "Materials" are products substantially shaped, cut, worked, mixed, finished, refined or otherwise fabricated, processed, or installed to form a part of the Work.
  - 3. "Equipment" is a product with operational parts, whether motorized or manually operated, that requires service connections, such as wiring or piping.

#### 1.4 QUALITY ASSURANCE

- A. Source Limitations: To the fullest extent possible, provide products of the same kind from a single source.

1. When specified products are available only from sources that do not, or cannot, produce a quantity adequate to complete project requirements in a timely manner, consult with the Architect to determine the most important product qualities before proceeding. Qualities may include attributes, such as visual appearance, strength, durability, or compatibility. When a determination has been made, select products from sources producing products that possess these qualities, to the fullest extent possible.
- B. Compatibility of Options: When the Contractor is given the option of selecting between 2 or more products for use on the Project, the product selected shall be compatible with products previously selected, even if previously selected products were also options.
  1. Each prime contractor is responsible for providing products and construction methods that are compatible with products and construction methods of other prime or separate contractors.
  2. If a dispute arises between prime contractors over concurrently selectable, but incompatible products, the Architect will determine which products shall be retained and which are incompatible and must be replaced.
- C. Nameplates: Except for required labels and operating data, do not attach or imprint manufacturer's or producer's nameplates or trademarks on exposed surfaces of products that will be exposed to view in occupied spaces or on the exterior.
  1. Labels: Locate required product labels and stamps on concealed surfaces or, where required for observation after installation, on accessible surfaces that are not conspicuous.
  2. Equipment Nameplates: Provide a permanent nameplate on each item of service-connected or power-operated equipment. Locate on an easily accessible surface that is inconspicuous in occupied spaces. The nameplate shall contain the following information and other essential operating data:
    - a. Name of product and manufacturer.
    - b. Model and serial number.
    - c. Capacity.
    - d. Speed.
    - e. Ratings.

## 1.5 PRODUCT DELIVERY, STORAGE, AND HANDLING

- A. Deliver, store, and handle products according to the manufacturer's recommendations, using means and methods that will prevent damage, deterioration, and loss, including theft.
  1. Schedule delivery to minimize long-term storage at the site and to prevent overcrowding of construction spaces.
  2. Coordinate delivery with installation time to assure minimum holding time for items that are flammable, hazardous, easily damaged, or sensitive to deterioration, theft, and other losses.
  3. Deliver products to the site in an undamaged condition in the manufacturer's original sealed container or other packaging system, complete with labels and instructions for handling, storing, unpacking, protecting, and installing.
  4. Inspect products upon delivery to ensure compliance with the Contract Documents and to ensure that products are undamaged and properly protected.
  5. Store products at the site in a manner that will facilitate inspection and measurement of quantity or counting of units.
  6. Store heavy materials away from the Project structure in a manner that will not endanger the supporting construction.
  7. Store products subject to damage by the elements above ground, under cover in a weathertight enclosure, with ventilation adequate to prevent condensation. Maintain temperature and humidity within range required by manufacturer's instructions.

## PART 2 - PRODUCTS

### 2.1 PRODUCT SELECTION

- A. General Product Requirements: Provide products that comply with the Contract Documents, that are undamaged and, unless otherwise indicated, new at the time of installation.
  - 1. Provide products complete with accessories, trim, finish, safety guards, and other devices and details needed for a complete installation and the intended use and effect.
  - 2. Standard Products: Where available, provide standard products of types that have been produced and used successfully in similar situations on other projects.
- B. Product Selection Procedures: The Contract Documents and governing regulations govern product selection. Procedures governing product selection include the following:
  - 1. Nonproprietary Specifications: When Specifications list products or manufacturers that are available and may be incorporated in the Work, but do not restrict the Contractor to use of these products only, the Contractor may propose any available product that complies with Contract requirements. Comply with Contract Document provisions concerning "substitutions" to obtain approval for use of an unnamed product.
  - 2. Descriptive Specification Requirements: Where Specifications describe a product or assembly, listing exact characteristics required, with or without use of a brand or trade name, provide a product or assembly that provides the characteristics and otherwise complies with Contract requirements.
  - 3. Performance Specification Requirements: Where Specifications require compliance with performance requirements, provide products that comply with these requirements and are recommended by the manufacturer for the application indicated.
  - 4. Manufacturer's recommendations may be contained in published product literature or by the manufacturer's certification of performance.
  - 5. Compliance with Standards, Codes, and Regulations: Where Specifications only require compliance with an imposed code, standard, or regulation, select a product that complies with the standards, codes, or regulations specified.
  - 6. Visual Matching: Where Specifications require matching an established Sample, the Architect's decision will be final on whether a proposed product matches satisfactorily.
  - 7. Where no product available within the specified category matches satisfactorily and complies with other specified requirements, comply with provisions of the Contract Documents concerning "substitutions" for selection of a matching product in another product category.
  - 8. Visual Selection: Where specified product requirements include the phrase "... as selected from manufacturer's standard colors, patterns, textures ..." or a similar phrase, select a product and manufacturer that complies with other specified requirements. The Architect will select the color, pattern, and texture from the product line selected.
  - 9. Allowances: Refer to individual Specification Sections and "Allowance" provisions in Division 1 for allowances that control product selection and for procedures required for processing such selections.

## PART 3 - EXECUTION

### 3.1 INSTALLATION OF PRODUCTS

- A. Comply with manufacturer's instructions and recommendations for installation of products in the applications indicated. Anchor each product securely in place, accurately located and aligned with other Work.

1. Clean exposed surfaces and protect as necessary to ensure freedom from damage and deterioration at time of Substantial Completion.

END OF SECTION 01 60 00

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