BBS ARCHITECTS
LANDSCAPE ARCHITECTS
ENGINEERS

FREDERICK W. SEEBA, PE, MANAGING PARTNER
LAWRENCE SALVESEN, AIA, PARTNER
KEVIN J. WALSH, AIA, PARTNER
KENNETH G. SCHUPNER, AIA, PARTNER
JOSEPH B. RETTIG, AIA, PARTNER
GARY W. SCHIEDE, AIA, PARTNER

October 7, 2026

BID ADDENDUM No. 1

Re: Eastchester UFSD
Phase 5a Bid Package
W SED No. 66-03-01-03-0-002-012
BBS File No. 25-139

This addendum contains changes to the requirements of the contract drawings and/or project manual. Such changes shall be incorporated into the contract documents and shall apply to the work with the same meaning and force as if they had been included in the original documents. Wherever this addendum modifies a portion of a paragraph of project manual or any portion of the drawing, the remainder of the paragraph or drawing affected shall remain in force.

The conditions of the basic project manual shall govern all work described in this addendum. Wherever the conditions of work and the quality or quantity of materials or workmanship are not fully described in this addendum, the conditions of work, etc. included in the basic project manual for similar items of work shall apply to the work described in this addendum.

The "Conditions of the Contract" apply to all work described in this addendum.

The following changes shall be and are hereby made:

PROJECT MANUAL MODIFICATIONS

1. **Specification Section 004100 – Bid Form**
    a. The Specification Section shall be deleted and replaced with the attached.
2. **Specification Section 005000 – Standard Agreement Owner and Contractor CM AIA 132 2019**
    a. The Specification Section shall be deleted and replaced with the attached.
3. **Specification Sectio 005100 – General Conditions of the Contract CM AIA 232 2019**
    a. The Specification Section shall be deleted and replaced with the attached.
4. **Specification Sectio 005200 – Supplementary Conditions CM AIA 232 2019 (BBS Dec. 2023)**
    a. The Specification Section shall be deleted in its entirety.

CONSTRUCTION DOCUMENTS MODIFICATIONS

1. **25-139a Drawing E1.02**
    a. Construction drawing shall be deleted and replaced with the attached.
2. **25-139a Drawings E7.02**
    a. Construction drawing shall be deleted and replaced with the attached.

END OF ADDENDUM

EASTCHESTER UNION FREE SCHOOL DISTRICT BID PROPOSAL FORM

2022 CAPITAL BOND IMPROVEMENTS, PHASE 5a at the WAVERLY SCHOOL

NAME OF BIDDER: _____

BUSINESS ADDRESS: _____

TELEPHONE NUMBER: _____ **DATE OF BID:** _____

The bidder mentioned above declares and certifies:

First: That said bidder is of lawful age and the only one interested in this bid, and that no one other than said bidder has any interest herein.

Second: That this bid is made without any previous understanding, agreement, or connection with any other person, firm, or corporation making a bid for the same purpose, and is in all respects fair and without collusion or fraud.

Third: That no member of the Board of Education of the **Eastchester Union Free School District,** Town of **Eastchester, New York**, nor any officer or employee or person whose salary is payable as a whole or in part from the treasury of said Board of Education is directly or indirectly interested in this bid or in the supplies, materials, equipment, work, or services to which it relates, or in any portion of the profits thereof.

Fourth: That said bidder has carefully examined the Instruction to Bidders, schedules, and specifications prepared under the direction of the Board of Education, and will, if successful in this bid, furnish and deliver at the prices bid and within the time stated, all materials, supplies, apparatus, goods, wares, merchandise, services, or labor for which this bid is made.

Fifth: Single Prime Contracts: Where the project cost does not exceed $1,500,000 and the Owner has decided to solicit bids from one general contractor, the Bidder shall submit with its bid a separate sealed list that names each subcontractor that the bidder will use to perform work in the contract, and the agreed-upon amount to be paid to each, for: (A) Plumbing and gas fitting; (B) Steam heating, hot water heating, ventilating and air condition apparatus and (C) Electric wiring and standard illuminating fixtures.

After the low bid is announced, the sealed list of subcontractors submitted with such low bid shall be opened and the names of such subcontractors shall be announced, and thereafter any change of subcontractor or agreed-upon amount to be paid to each shall require the approval of the public owner, upon a showing presented to the public owner of legitimate construction need for such change, which shall be open to public inspection.

Sixth: That the prices quoted are exclusive of all federal, state, and municipal sales and excise taxes.

Seventh: The undersigned further declares that he has received and examined the following addenda:

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

Clarification No. _____ Dated: _____

Clarification No. _____ Dated: _____

FOR PROPOSAL FORM TO BE VALID, ALL PAGES OF THE PROPOSAL FORM MUST BE DULY EXECUTED.

Eighth: The Bidder shall check here ____ if the bid has been based upon equivalents in lieu of any kind, type, brand, or manufacturer of material other than those named in the specifications. If checked, the Bidder shall submit the Equivalency Form in accordance with Instructions to Bidders, Paragraph 8B. This item in no way prohibits the Bidder from submitting equivalents after the award of contract.

Ninth: The undersigned further understands and agrees that he is to furnish all labor, materials, equipment, supplies, and other facilities and things necessary and required for the execution and completion of:

2022 CAPITAL BOND IMPROVEMENTS, PHASE 5a at THE WAVERLY SCHOOL

in strict accordance with the contract documents:

BASE BID GC-1 – GENERAL CONSTRUCTION

The General Contractor shall state the complete price to perform all work including, but not limited to, all general construction, demolition, and abatement as required at the Waverly School, as shown on the drawings and as specified herein.

BASE BID GC-1 BID PRICE = $_____

Lump Sum Allowance No.1 $_____
(See Section 012100)

TOTAL GENERAL CONSTRUCTION
BASE BID GC-1 BID PRICE = $_____
Total Bid price in dollars and cents

$_____
Bid price written in words

BASE BID MC-1 – MECHANICAL CONSTRUCTION

The Mechanical Contractor shall state the complete price to perform all work including, but not limited to, all mechanical work required at the Waverly School, as shown on the drawings and as specified herein.

BASE BID MC-1 BID PRICE = $_____

Lump Sum Allowance No.1 $_____
(See Section 012100)

TOTAL MECHANICAL CONSTRUCTION
BASE BID MC-1 BID PRICE = $_____
Total Bid price in dollars and cents

$_____
Bid price written in words

BASE BID PC-1 – PLUMBING CONSTRUCTION

The Plumbing Contractor shall state the complete price to perform all work including, but not limited to, all plumbing work required at the Waverly School, as shown on the drawings and as specified herein.

BASE BID PC-1 BID PRICE = $_____

Lump Sum Allowance No.1 $_____
(See Section 012100)

TOTAL PLUMBING CONSTRUCTION
BASE BID PC-1 BID PRICE = $_____
Total Bid price in dollars and cents

$_____
Bid price written in words

BASE BID EC-1 – ELECTRICAL CONSTRUCTION

The Electrical Contractor shall state the complete price to perform all work including, but not limited to, all electrical work required at the Waverly School, as shown on the drawings and as specified herein.

BASE BID EC-1 BID PRICE = $_____

Lump Sum Allowance No.1 $_____
(See Section 012100)

TOTAL ELECTRICAL CONSTRUCTION
BASE BID EC-1 BID PRICE = $_____
Total Bid price in dollars and cents

$_____
Bid price written in words

ALTERNATES FOR BASE BID EC-1

1. ALTERNATE No. EC-1 FACP UPGRADES

The Electrical Contractor shall state the complete price to be **(added to)** the base bid to provide all labor and materials required to _____ _____as shown on the drawings, and as specified herein.

ADD: _____
Bid price written in words

$_____
Bid price in dollars and cents

2. ALTERNATE No. EC-2 PANEL FEEDER WIRE REPLACEMENT

The Electrical Contractor shall state the complete price to be **(added to)** the base bid to provide all labor and materials required to _____ _____as shown on the drawings, and as specified herein.

ADD: _____
Bid price written in words

$_____
Bid price in dollars and cents

UNIT PRICES

Should the contract work be increased or decreased as per the General Conditions of the Contract, Article 7, Changes in the Work, the bidder hereby agrees that the following unit price is the basis for the extra or credit. The price includes all labor, material, overhead, profit, administration, insurance, taxes, and incidental or contributory items, or cost to the contractor and/or supplier in connection therewith. The price stipulated below shall be the amount of extra or credit applied to the contract for the increase or decrease in the scope of work.

Unit Prices for Base Bid GC-1 (General Construction)

The General Contractor shall state the complete amount to provide and install the following:

1. Unit Price: Contractor shall state the amount to _____ per _____ $_____ per
2. Unit Price: Contractor shall state the amount to _____ per _____ $_____ per

Unit Prices for Base Bid EC-1 (Electrical Construction)

The Electrical Contractor shall state the complete amount to provide and install the following:

1. Unit Price: Contractor shall state the amount to _____ per _____ $_____ per
2. Unit Price: Contractor shall state the amount to _____ per _____ $_____ per

The Board of Education hereby reserves the right to accept or reject any item set forth individually in Paragraph Nine above. The Owner may determine the lowest bid by adding one base bid to other base bid(s) and/or by adding to or deducting from those base bid(s), additive or deduct alternates, unit prices, or substitutions, if any, which the Owner elects to accept after the opening of bids.

Tenth: **BID SECURITY**

Each bidder shall deposit with his bid a bid bond, bank draft, or certified check in the amount of not less than ten percent (10%) of the Base Bid made payable to:

Board of Education, Eastchester Union Free School District in the amount:

_____ $(_____)

AND agrees such surety shall be a measure of liquidated damages should he default in delivery of agreement.

Eleventh: **COMPLETION** (Contractor shall fill in number of days)

It is intended that the work under this contract be completed substantially within _____ consecutive calendar days after receipt of authorized letter of intent issued by the District.

Twelfth: **NON-COLLUSIVE BIDDING CERTIFICATION**
General Municipal Law, Section 103-d
(Submit with Bid Proposal Form)

A. By submission of this bid, the bidder and each person signing on behalf of the bidder certifies, and if this is a joint bid each party hereto certifies as to its own organization, under penalty of perjury that to the best of the bidder's 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 a bid for the purpose of restricting competition.

B. A bid shall not be considered for award nor shall award be made where A-1, 2, and 3 above have not been complied with provided, however, that if in any case the bidder shall so state and shall furnish with a 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.

The fact that the 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 lists for such items, or (c) 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 Paragraph A above.

C. If the bidder is a corporation, the corporation shall be deemed to have been authorized by the Board of Directors of the bidder to make the above certification 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.

(Seal of Corporation) _____
Corporate or Company Name

By: _____
Signature Title

Date: _____

Thirteenth: On acceptance of this proposal for said work, the undersigned hereby binds himself or

themselves to enter into written contract with the Board of Education within ten (10) days of date of notice of award, and to comply in all respects with the provisions set forth in "Instructions for Bidders" and "General Conditions of Contract" in relation to security for the faithful performance of the terms of said contract.

IF A CORPORATION (Seal of corporation):

NAME	ADDRESS
President	
Secretary	
Treasurer	

IF A FIRM:

NAME OF MEMBERS	ADDRESS

DRAFT **AIA® Document A132™ – 2019**

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

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

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

Eastchester Union Free School District
500 White Plains Road
Eastchester, NY 10709

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

for the following Project:
The Waverly School
45 Hall Avenue
Eastchester, NY 10709

The Construction Manager:
Arris Contracting Company, Inc.
189 Smith Street
Poughkeepsie, New York 12601

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

BBS Architects, Landscape Architects and Engineers P.C.
244 E Main Street
Patchogue, NY 11772

The Owner and Contractor agree as follows:

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, 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, or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, for the Work, 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

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[« »] The date of this Agreement.

[X] A date set forth in a notice to proceed issued by the Construction Manager.

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

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

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

§ 3.3 – Intentionally omitted

§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete
§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:
(Check one of the following boxes and complete the necessary information.)

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

[X] By the following date: Refer to Specification Section 011100 – Milestone Schedule

§ 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
	Refer to Specification Section 011100 – Milestone Schedule

§ 3.4.3 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 Project 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.

§ 3.4.4 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 4.3.

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

(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
Refer to Specification Section 012300 - Alternates	

§ 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
Refer to Specification Section 012100 - Allowances	

§ 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	Price
Refer to Specification Section 012200 – Unit Prices	

§ 4.3 The Contractor acknowledges Article 8 of A232-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified for this project (hereinafter, "AIA Document A232–2019"), and specifically Section 8.4.

§ 4.3.1 The Contractor recognizes that achieving Substantial Completion of the Work in accordance with the time limits set forth in this Agreement, and as further set forth in the Milestone Schedule provided in the Project Manual and/or Bidding Documents, is a material condition of this Agreement, and that if the Contractor fails to achieve Substantial Completion of the Work, or designated parts thereof, in accordance with such schedule, and/or a failure to adhere to Section 8.3.1.4 of AIA Document A232–2019, the Owner will incur damages as a result. The Owner and Contractor agree that the amount of such damages is difficult to ascertain with any precision. Because of the difficulty of ascertaining all resulting and corresponding damages, it is hereby agreed that the Contractor shall be subject to Section 8.2.6 and be assessed in the amounts provided in Section 8.4.2 of AIA Document A232-2019, for each day the Project, or specific Work item, is not substantially complete after expiration of the Contract Time for Substantial Completion, and for each day the Project is not finally complete after the expiration of the Contract Time for final completion.

§ 4.3.2 The Contractor acknowledges that the liquidated damages amount set forth in Section 8.4.2 of AIA Document A232-2019, represents a fair and reasonable estimate of the Owner's probable losses, damages and/or expenses, and are not a penalty, for late completion of the Work and the phases thereof.

§ 4.3.3 The Owner shall be entitled to offset any liquidated damages owed by Contractor against any amounts owing by the Owner to the Contractor.

§ 4.3.4 The Owner's right to liquidated damages shall survive abandonment of the Work by the Contractor and the Owner's termination of the Contract.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Contractor's Application for Payment is to be submitted to the Construction Manager not later than the 25th day of the current month. Application for Payment shall be reviewed by Construction Manager and Architect within 48 hours of receipt and promptly returned to Contractor for modification and/or final acceptance. All required supporting information and documentation required by the Contract Documents are to be returned in entirety with the executed Final Application for Payment not later than the 1st day of the following month. If an Application for Payment and/or supporting documentation is received by the Construction Manager after the application dates fixed above, the Application for Payment will be deemed late. A late Application for Payment and/or supporting documentation will then be considered complete on the 25th day of the next applicable month.

No additional notifications or time extensions will be given pertaining to Contractor's Application for Payment.

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

§ 5.1.4.1 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.

§ 5.1.4.2 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:

§ 5.1.4.3.1 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 Article 7 of AIA Document A232–2019 that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

- **.1** The aggregate of any amounts previously paid by the Owner;
- **.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;
- **.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- **.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect, Construction Manager or Owner 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** Retainage withheld pursuant to Section 5.1.7; and
- **.6** Subtract one hundred fifty percent (150%) of the amount of any lien(s) on public improvement filed against the Contract Sum that has not been released or discharged.

§ 5.1.5 – Intentionally omitted.

§ 5.1.6 – Intentionally omitted.

§ 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 (5) percent»

§ 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.)

«Not applicable»

§ 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.

§ 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

§ 5.2.1.1 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 all Closeout documents and complied with the final payment and all closeout requirements of the Contract Documents; and
- **.3** a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect.

§ 5.2.1.2 In addition to other required items, including but not limited to 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.

§ 5.2.1.3 The Owner's final payment to the Contractor, less any sum required by law to be held due to a lien(s) on public improvement filed against the Contract Sum that has not been released or discharged, shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment. After final payment, payment of any sums withheld due to a lien against a public improvement filed with the Owner against the Contract Sum will be made to the Contractor when the lien is discharged.

§ 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 wh oject 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.

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.

§ 6.2 Binding Dispute Resolution
For any Claim, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[X] Litigation in a court of competent jurisdiction in the County of Westchester in the State of New York.

ARTICLE 7 TERMINATION OR SUSPENSION
§ 7.1 Where the Contract Sum is a Stipulated Sum
§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.1.1.1 If the Contract is terminated, in whole or in part by Owner for Convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall incur no liability to Contractor by reason of such termination except that Contractor shall be entitled to payment in accordance with Section 14.4.3 of AIA Document A232–2019 as reduced in accordance with but not limited to Section 14.5.2 of AIA Document A232–2019. The Contractor shall be entitled to no payment for the terminated portion of the Work and waives and forfeits any claim for damages, overhead and/or lost profits for the terminated portion of the Work.

§ 7.1.2 The Work may be suspended by the Owner 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 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.

§ 7.2.1.2.2 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. 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 and in Section 5.4 of AIA Document A232–2019.

ARTICLE 8 MISCELLANEOUS PROVISIONS
§ 8.1 Where reference is made in this Agreement to AIA Document A232–2019, it refers to it as revised for this Project. Where reference is made in this Agreement to a provision, section or article of AIA Document A232–2019 or another Contract Document, the reference refers to that provision, section or article as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

« »
« »
« »
« »
« »
« »

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in Article 11 of AIA Document A232–2019, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in Article 11 of AIA Document A232–2019, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document C106™–2022, Digital Data Licensing Agreement, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document C106™–2022, Digital Data Licensing Agreement, 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 Contact Documents; and

.6 that it possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence or 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.

Upon the execution of this Contract, the Contractor shall, upon request, provide the Owner with unredacted copies of all contracts entered into between the Contractor and subcontractors or material suppliers. The Contractor's obligation to provide the Owner with said contracts shall continue for the duration of the Project.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

.2 Bidding Documents

.3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

.4 AIA Document C106™–2022, Digital Data Licensing Agreement

.5 Drawings:
Refer to Specification Section 000115 Drawing Index

.6 Specifications:
Refer to Specification Section 000110 Table of Contents

.7 Addenda, if any:

Number	Date	Pages

.8 Other Exhibits:
Reviewed and Accepted Contractor's Construction Schedule

.9 Other documents, if any, listed below:
Instructions to Bidders;
Contractor's Bid Form

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

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
	« »« »
(Printed name and title)	*(Printed name and title)*

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AIA® Document A232™ – 2019

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

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

for the following PROJECT:
(Name, and location or address)

The Waverly School
45 Hall Avenue
Eastchester, NY 10709

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Arris Contracting Company, Inc.
189 Smith Street
Poughkeepsie, NY 12601

THE OWNER:
(Name, legal status, and address)

Eastchester Union Free School District
500 White Plains Road
Eastchester, NY 10709

THE ARCHITECT:
(Name, legal status, and address)

BBS Architects, Landscape Architects and Engineers, P.C.
244 E Main Street
Patchogue, NY 11772

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the 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), 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.

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§ 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.

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§ 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.

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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 "includes" 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.

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§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.

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§ 1.1.11.18 "Project Manual" is a volume assembled for the Work that includes the Instructions to Bidders, General Conditions, Supplementary General Conditions, the Specifications, and all Addenda issued prior to execution of the Contract. The Project Manual will additionally include bidding requirements and documents and sample forms.

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

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

§ 1.1.11.21 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

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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.

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

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

§ 1.2.2.3 The Contractor acknowledges that the coordination requirements and Construction Schedule of this Project will require close cooperation and coordination between all Contractors on the Project site.

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§ 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 the Drawings and Specifications, having the force and effect as though reproduced therein, and upon entering into the Contract the Contractor acknowledges his familiarity with those pertaining to its Work. Furthermore, all Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others.

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.6 All Work shall conform to the National Electric Code, New York State Uniform Fire Prevention and Building Code, and amendments thereto, New York State Energy Conservation Construction Code, State Education Department Manual of Planning Standards, United States and New York State Department of Transportation, Environmental Protection Agency, Office of Engineering, Standard Specification, Construction and Materials, latest edition, Life Safety Code – NFPA, and applicable City and State Building Codes and Authorities having jurisdiction. The date of the reference standard shall be the latest edition at the time of signing the Contract except as specifically indicated otherwise.

.7 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 the 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.

.8 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.

.9 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.

.10 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.

.11 After execution of the Agreement and during the course of the Work should any ambiguities, discrepancies, omissions, or apparent errors be found on the drawings or in the specifications to which the Contractor has failed to call attention prior to submitting his bid, then the intention of the Contract Documents is to be interpreted by the Architect and/or Construction Manager and the decision as to the intent shall be final, and the Contractor hereby agrees to carry out the Work in accordance with the decision of the Architect and/or Construction Manager. Until such time as an interpretation is issued, it shall be assumed that the Contractor has based his bid on providing the Work in the better quality, greater quantity, or most expensive manner, for Work complete in every detail, even though every item necessarily involved is not particularly mentioned.

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§ 1.2.5 Each Contractor shall examine the building in which the Work is to be installed and shall acquaint himself fully with the existing conditions which relate to the Work to be performed. He shall compare existing conditions to those shown on Drawings or mentioned in the Specifications. Any discrepancies found between actual conditions and those shown on Drawings; or any interferences found which limit or prevent the proper installation or operation of the Work shown to be performed or specified shall be reported to the Architect before the Proposal is submitted. By submitting the Proposal without such notification to the Architect of discrepancies or interferences, the Contractor agrees that no subsequent modification of the Contract Price will be requested or made by reason of the Contractor's failure to acquaint himself fully with existing conditions, the Drawings and the Specifications.

§ 1.2.6Execution 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.

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§ 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 in writing and given, serviced or made (1) by depositing the same in the United States mail addressed to the authorized representative as specified in the Contract (or if no representative is specified to such party at the address stated in the Contract) of the party to be notified, postpaid and registered or certified with return receipt requested, (2) by depositing the same for overnight delivery (prepaid or billed to the party giving notice) with a nationally recognized overnight delivery service (e.g. Federal Express, USPS, UPS, etc.) addressed to the authorized representative of the party to be notified (or if no representative is specified to such party at the address stated in the Contract) or (3) by delivering the same in person to the said authorized representative of the party (or if no representative is specified to such party at the address stated in the Contract). Notices may be made by the party giving the notice by the party's counsel, the authorized representative of the party as specified in the Contract, or by an officer of the party that has authority to bind the party. Notices are to be sent to the designated representative of the party specified in the contract, when there is such designation, at address stated in the Contract. Notice deposited in the mail in accordance with this Section 1.6.1 shall be effective unless otherwise stated in the Contract from and after the fourth (4^{th}) day following the date deposited in a U.S. mail receptacle or when actually received by the party to whom addressed, whichever is earlier. Notices transmitted by overnight delivery shall be effective the first business day (excludes holidays, Saturdays and Sundays) following the day of deposit with the nationally recognized overnight delivery service or when actually received by the party to whom addressed, whichever is earlier. Notice given by delivery in person shall be effective only if and when received by the party to be notified. By giving the other parties at least seven (7) days written notice thereof, the Contractor, Owner, Construction Manager and Architect have the right to change their respective designee and respective address to any address in the United States of America for receipt of notices.

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§ 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

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

§ 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 C106™–2022, Digital Data Licensing Agreement , shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any materials or information with respect to the Work or the Project, including without limitation any promotional or marketing media or other material or information related to the Owner, the Work or the Project, except: (1) with prior written consent of the Owner, (2) information that was in the public domain prior to the date of this Agreement, (3) information which becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, (4) as may be required to perform the Work or by any applicable law, or (5) for purposes of coordination with other prime contractors. The Contractor and its employees, Subcontractors, Sub-subcontractors and agents hereby agrees to indemnify and hold the Owner, the Construction Manager and Architect and their respective employees, consultants, volunteers and agents harmless from and against any cost, damage, liability, loss or claim arising from violation of the foregoing.

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

§ 1.9.3 The Contractor shall specifically cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment of the Work to warrant and represent all items set forth in this Section 1.9.

§ 1.9.4 The indemnities, representations and warranties contained in this Section 1.9 shall survive the complete performance of the Work or earlier termination of this Agreement.

ARTICLE 2 OWNER

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§ 2.1 General

§ 2.1.1 The Owner is the Board of Education of the Eastchester Union Free School District ("Board of Education"). The Board of Education shall have exclusive authority to: (1) modify, delete or supplement terms of Contract Documents; (2) approve and authorize the use of allowances; (3) adjust time and payment terms of the Contract Documents; and (4) accept Work performed that is not in compliance with the Contract Documents. The Owner shall designate in writing a representative who shall have express authority to address administrative matters beyond this exclusive scope of duty. Except as otherwise provided in Article 4, the Construction Manager and the Architect shall not have such authority.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights.

§ 2.1.3 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.

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

§ 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 New York State Education Department. The Contractor shall furnish the Construction Manager with original copies of all permits prior to the commencement of the work, and shall prominently display a copy of all permits at a location approved by the Construction Manager.

§ 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 one (1) set 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 and the Project Manual will be provided sets at the cost of printing, postage and handling.

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§ 2.3.8 The Owner shall endeavor to 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.

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§ 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-day period after receipt of notice from the Owner, Architect or Construction Manager to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such three (3) day period and without prejudice to other remedies the Owner may have, including the Owner's right to have the surety perform and correct such deficiencies, exercise remedies to current such deficiencies and correct such default or neglect at Contractor's expense. The Owner's reasonable cost of correcting such default or neglect shall be deducted from payments due the Contractor by Change Order,

Construction Change Directive, back charge or other means. The Construction Manager or Architect may, pursuant to Section 9.5.1, withhold, modify and/or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies. The Owner's reasonable costs shall include the cost of labor and materials to complete the correction of such default or neglect, 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, and, without limitation, the Owner's reasonable attorney's fees, including attorney's fees incurred in the course of enforcing Owner's rights under this provision. If current and future payments due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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

§ 2.7 OWNER'S RIGHTS FOR USE OF PREMISES

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

§ 2.7.2 Should there be, unwarranted delay on the part of any Contractor in completion of uncompleted work or other Contractor requirements, 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 Contractor whose unfinished work is performed subsequently shall be responsible for the prevention of any damage to such Owner's installation. Such use or occupancy by the Owner shall in no instance constitute acceptance of any of the Work.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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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” when used herein 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. 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.

By executing the Contract, Contractor represents and warrants to the Owner that:

.1 Contractor is and will be financially responsible and has and will have sufficient liquidity to meet its financial responsibilities under the Contract and for all other Projects in which Contractor is or may become involved;

.2 Contractor has carefully examined the Contract Documents and has visited and carefully examined the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the 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.

.3 From Contractor’s investigation, Contractor has satisfied itself as to the nature and location of the proposed Work, general and local conditions, and all matters which may in any way affect the Work or its performance; and

.4 Contractor fully understands the intent and purpose of the Contract Documents.

.5 The Contractor acknowledges that the Owner is a school district which is subject to various laws and regulations of the State of New York. The Contractor will, in each phase of the Contract, in accordance with applicable standards, comply with applicable laws and regulations as they pertain to the bidding and construction of the Project, including, without limitation, the requirements of Article 5-A of the General Municipal Law; Article 9 of the Education Law; Article 8 of the New York Labor Law; and Sub-Chapter J, Part 155 of Title 8, Chapter II of the Codes, Rules and Regulations of the State of New York.

§ 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 examined the Contract Documents and visited the site, is thoroughly familiar with the nature and location of the Work, the site and become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor’s failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents are waived and will not be permitted.

§ 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 or

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

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

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

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

§ 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 in its proposal. The Contractor is deemed to be a qualified expert in the systems and construction requirements of the Work of its Contract. The Contractor hereby specifically acknowledges and declares that the Contract Documents are full and complete, are sufficient to have enabled it to determine the cost of the Work, and that the Drawings, the Specifications, and all Addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, building codes, and regulations, and otherwise to fulfill all of its obligations under the Contract Documents. The Contractor shall take field measurements 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.

§ 3.2.2.1 The Contractor shall be responsible to remove and/or relocate all items that interfere with the new construction at no additional cost to the Owner.

§ 3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved

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pursuant to Section 3.12.

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

§ 3.2.4.1 RFIs are for requests on clarifications or questions on Drawings and Specifications, not Contract terms, scheduling items, or general correspondence, nor, as a means to describe or request approval of alternate construction means, methods or concepts or substitution or materials, systems means and methods. The Contractor shall fill all RFIs out in accordance with the provisions of the Project Manual. Neither the Architect nor the Construction Manager shall fill said forms out on the Contractor's behalf.

§ 3.2.5 If the Contractor, during the progress of the Work, discovers any discrepancies between the Drawings and the Specifications, errors and/or omissions on the Drawings, or any discrepancies between physical 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 an 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.

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

§ 3.2.8 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.

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§ 3.2.10 The Architect and/or Construction Manager may require that the Work be suspended at any time when location and limit marks established by the Contractor are not reasonably adequate to permit checking completed Work or the Work in progress.

§ 3.2.11 The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. Notwithstanding any other provision herein, the Owner, the Architect and Construction Manager assume 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 safety and providing a safe place for the performance of the Work. The Owner assumes no responsibility for any erroneous conclusions or interpretations made by the Contractor based on information made available by the Owner. 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.

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

§ 3.2.13 The Owner is entitled to deduct from the Contract Sum amounts paid to the Architect and/or Construction Manager for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor or should have been known to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention, 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.

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§ 3.3.1.1 The Contractor shall review any specified construction or installation procedure, including those recommended by manufacturers, advise the Architect and/or Construction Manager if the specified procedure deviates from good construction practice, or of any objections the Contractor may have to the procedure; and propose any alternative procedure. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor, 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. The Contractor shall be responsible

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to the Owner for the acts or omissions of the Contractor, the Contractor's employees, the Contractor's Subcontractors, the Contractor's material suppliers, their respective agents and employees, and any other persons performing portions of the Work on behalf of the Contractor.

§ 3.3.3.1 The Contractor 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 Contract Documents.

§ 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.

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§ 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 and Subcontractors of the Owner's instructions and restrictions.

§ 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

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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 designated representative of the Owner. 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 shutdown. All material, equipment, and manpower necessary in the performance of a shutdown shall be on site prior to interruption of service.

§ 3.3.11 It is understood and agreed that the relationship between the Contractor and the Owner shall be that of an independent contractor. Nothing contained in or inferable from the Contract Documents shall be deemed or construed to (1) make the Contractor the agent, servant or employee of the Owner or (2) create any partnership, joint venture or other association between the Owner and Contractor. Any direction or instruction by the Owner regarding the Work shall be given solely to relate the results the Owner desires to obtain from the Work and shall not be construed as affecting the Contractor's independent contractor status.

§ 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, the 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 the 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**.**

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

§ 3.4.1.3 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, until its Work is completed and accepted 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 written 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 two weeks (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 and such person shall not be reassigned to the Project without the prior written permission of the Owner, through the Construction Manager.

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§ 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.

§ 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 or the Contract Documents.

§ 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 and continuous 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. The Contractor shall check all materials entering into the Work site and shall keep full detailed accounts.

§ 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 and/or Construction Manager reserve 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 or Construction Manager, be removed from the Project and not again be assigned thereon without written permission of the Owner, through the Construction Manager.

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§ 3.4.6.7 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, within 10

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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 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 is solely responsible for managing labor and labor relations with respect to those engaged by it to perform the Work of the Project. 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 labor 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 affected 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 the Contract Time or additional compensation shall be granted to the Contractor for delays caused by labor or material disputes. No delay in the performance of the Work shall be excused by reason of labor problems affecting the Contractor or any subcontractor.

§ 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. In the event of strikes or labor disputes by the Contractor's forces or other Multiple Prime Contractors, or Separate Contractors performing work for the Owner, the Contractor shall continue with the Work and provide all necessary laborers as required to maintain the schedule and completion dates of the Project.

§ 3.4.8.7 The Contractor shall be liable to the Owner for all damages and additional costs incurred by the Owner as a result of work stoppages, slowdowns, picketing, disputes, strikes or other disruptive activity at the Project sites arising from the labor practices of the Contractor or its Subcontractors, Suppliers or Sub-subcontractors. Failure to correct any such dispute within seven (7) days shall result in the Contract being subject to termination by the Owner.

§ 3.4.9 The Contractor and its Subcontractors employed upon the Work shall abide by and conform with all labor

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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 be responsible for complying with applicable union regulations existing under current labor agreements in performing construction work on the Project. The Contractor will make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner, and without recourse to the Construction Manager, Architect or the Owner, any conflict between the Contract Documents with the Owner and any agreements or regulations of any kind, at any time in force among members of a trade union or any 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. The Contractor shall bear all expenses resulting from approved substitutions requested by the Contractor, including any structural, plumbing, mechanical and electrical trade costs made necessary by the substitution.

§ 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.

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§ 3.4.14 The Contractor shall furnish the Construction Manager, in writing, the names, addresses and telephone numbers of the members of the Contractor's organization who can be contacted in the event of off-hours emergency at one or more of the Project sites.

§3.4.15 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 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.

§ 3.4.16 Unless otherwise specifically agreed in writing by the Owner for a specific purpose, the Owner shall not be responsible for any overtime charges or shift differential charges incurred by the Contractor during the course of this Project. Any and all costs associated with the Work performed at hours requiring the payment of overtime or shift differentials by the Contractor to its workers shall be the Contractor's responsibility. When the Owner specifically agrees in writing to be responsible for overtime costs incurred by the Contractor, the Owner shall reimburse the Contractor or its Subcontractor on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment.

§ 3.4.17 Applicable codes and standards for material furnished and work installed shall include all state laws, local ordinances, requirements of governmental agencies having jurisdiction, and requirements of state, federal and industry codes and standards that apply to the Project and its components, including but not limited to:

1. New York State Uniform Prevention and Building Code and amendments thereto.
2. New York State Energy Conservation Construction Code.
3. State Education Department Manual of Planning Standards and 8 N.Y.C.R.R. § 155.5.
4. New York State Department of Transportation, Office of Engineering, Standard Specification, Construction and Materials dated January 2, 1990, and latest addendum thereto.
5. Life Safety Code – NFPA 101-91.
6. National Electric Code.
7. National Board of Fire Underwriters.
8. Any other codes or standards referenced in the Specifications and Drawings.

§ 3.4.17.1 Where a conflict occurs between the standards cited above or between them and these Specifications, the more stringent requirement shall govern.

§ 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, including substitutions not properly approved and authorized, shall be considered defective. This warranty shall include all parts and labor both on and off the Project site, together with all necessary transportation and shipping charges. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of the Owner.

§ 3.5.1.1 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.

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§ 3.5.1.2 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. All materials are to be new, unless specified otherwise.

§ 3.5.1.3 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.

§ 3.5.1.4 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) year 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. The Performance and Payment Bonds shall remain in full force and affect through the guarantee period. 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 shall assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to equipment, fixtures, materials and/or labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. The terms of the warranties shall be as individually specified. If no term is specified, the term shall be for a minimum of one year. The Contractor shall fully cooperate with the Owner in the event the Owner pursues remedies under any warranties assigned to the Owner. The Contractor acknowledges that its obligations to the Owner under Section 3.5 and Article 12 are joint and several with its Subcontractors, suppliers, and material or equipment 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 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 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.

§ 3.5.2.1 The warranties provided by the Contractor in this Section 3.5 is in addition to any warranty provided by equipment and material manufacturers. Notwithstanding anything to the contrary contained in the Contract Documents, all warranties shall be construed in the manner and duration most favorable to the Owner. The warranties in this Section 3.5 shall survive expiration and/or termination of the Contract.

§ 3.5.2.2 The Contractor warrants good and legal title to all materials, equipment and fixtures installed or incorporated into the Work.

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

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

§ 3.5.3.1 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 it 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 also be made to cover (and does cover) a period of two (2) years from the date of Substantial Completion all work under the Contract as required by Article 12 hereof, or for a longer period where so stipulated in the Contract Documents.

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§ 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 The Contractor shall in case of work performed by its Subcontractors, and where guarantees are required, secure warranties from Subcontractors and deliver copies of same to the Construction Manager countersigned by the Contractor.

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§ 3.5.6 Neither final payment nor provision in the Contract Documents nor partial or entire occupancy of premises by the 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. The Owner will not be responsible to reimburse the cost of taxes incurred by the Contractor or its Subcontractor for 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 Owner shall secure a building permit from the State Education Department as required for the Project. The Contractor shall secure and pay for all other permits and governmental fees, licenses, and inspections necessary for proper execution of and completion of the Contract that are legally required when bids are received. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings.

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§ 3.7.1.1 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. It is the Contractor's responsibility to comply with any conditions or limitations placed on the Project by these permits. The Contractor shall fully cooperate with the Owner in meeting the permit requirements and accommodations of regulatory inspections and directives. Failure to possess any such license constitutes a material breach of this Contract.

§ 3.7.1.2 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.

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§ 3.7.2.1 In accordance with New York State Labor Law Article 8, Section 220, subdivision 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; provided that, in the case of a condition at the site that involves hazardous or toxic substances, as those terms are defined by OSHA or AHERA, notice to the Owner, the Construction Manager and the Architect shall be given immediately upon discovery of such hazardous or toxic substance. 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

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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.

§ 3.7.6 Upon completion of the Work, the Contractor shall deliver to the Construction Manager original copies of all required final certificates of inspection and documentation evidencing that the inspections required by authorities having jurisdiction over the Work have been performed.

§ 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. Refer to Specifications Section 012100.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

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

§ 3.9.1.1 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. To the extent Work is being performed contemporaneously at different facilities of the Owner, the Contractor shall assign different superintendents for each facility at which Work is being performed.

§ 3.9.1.2 The Project Manager and 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.

§ 3.9.1.3 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

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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. Superintendent is required to attend all on site meetings.

§ 3.9.2 The Contractor shall employ a Superintendent whose qualifications meet or exceed the following: a minimum of five (5) years' experience as a Superintendent in the particular construction discipline required by the Contract; supervision on at least two (2) construction projects equal to, or greater than, the Contract Sum for this Contract, and responsible for the direct supervision on at least two (2) projects similar to the construction type and procedure of this Project. Additionally, 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 and/or Construction Manager. The Contractor shall not elevate any tradesman to the role of Superintendent on either a temporary or permanent basis while simultaneously that tradesman is still performing the daily duties of their trade for which they were initially hired and are currently being compensated for.

§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 and/or Construction Manager may take remedial action to insure 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.

§ 3.10 Contractor's Construction and Submittal Schedules

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§ 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 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 Multiple Prime Contractors or the construction or operations of the Owner's own forces. The Contractor's construction schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project but the Contract Time and any applicable Milestone Date shall not be changed except by fully executed Change Order.

§ 3.10.1.1 The construction schedule shall be in a detailed precedence style critical path method (CPM) or Primavera-type format satisfactory to the Owner, the Construction Manager and the Architect which shall also:

(a) provide a graphic representation of all activities and events that will occur during performance of the Work including the submission, review and approval of all submittals (i.e. Shop Drawings, etc.) re-quired by the Contract Documents;

(b) identify with each phase of construction and occupancy; and

(c) set forth dates that are critical in insuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as the Milestone dates).

§ 3.10.1.2 Upon review and acceptance by the Owner and the Construction Manager of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the agreement as an exhibit or incorporated therein by reference. If not accepted by the Owner and the Construction Manager, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Construction Manager and re-submitted for acceptance.

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§ 3.10.1.3 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. The accepted construction schedule shall be dated to reflect actual conditions (sometimes referred to as progress reports) as set forth in this Section or if requested by the Owner, Construction Manager or Architect.

§ 3.10.1.4 The sequence of the Work shall be scheduled with the Owner, through the Construction Manager, 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.

§ 3.10.1.5 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 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 Contractor and other 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.

§ 3.10.2.1 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.

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§ 3.10.4.1 The Owner may exercise the rights furnished pursuant to this Section 3.10.4 as frequently as is reasonably necessary to ensure that the Contractor's performance of the Work will comply with any milestone date or completion date set forth in the Project Schedule. Such extraordinary measures shall not constitute Acceleration of the Contract. The Owner reserves the right to withhold payment until such time as the Contractor submits a schedule showing the Work to be on schedule per the Project Schedule or per a revised schedule approved 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.

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§ 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.

§ 3.10.8.1 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.

§ 3.10.8.2 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 the Contractor shall constitute a waiver by the Owner of any damages or losses which the Owner may suffer by reason of such resequencing or the failure of the 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 reasonably 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 The Contractor acknowledges and agrees that there should be no additional compensation paid for schedule modifications caused directly or indirectly by any Contagion Requirements or health crises. The Contractor further acknowledges and agrees
that its sole remedy for any schedule modifications or delays caused directly or indirectly by the Contagion Requirements shall be an extension of the Contract Time, if warranted.

§ 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.

§ 3.11.2.1 The Contractor shall maintain said set in good condition and shall use colored pencils to markup 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

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or Architect may reasonably request.

§ 3.11.2.2 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.

§ 3.11.2.3 The colored record drawing and the as-built reproducible drawings and a digital copy of same 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 the Contract Documents notably the Project Manual, including Specifications Section 013300, "Submittal Procedures."

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, recommended installation procedures and 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.

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§ 3.12.4.1 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,

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and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall be responsible for verification of field dimensions and conditions and shall furnish such information to the Architect when requested. Before the Contractor proceeds with the Work in question, the Contractor should field verify all dimensions. In case of doubt about dimensions, the Contractor should notify the Architect immediately for instructions.

§ 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 five (5) 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 Contract Documents.

§ 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. The Construction Manager shall review submittals for sequencing, constructability, and coordination impact on other Contractors.

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

§ 3.12.9 Upon the Architect's rejection of the Contractor's Shop Drawings, Product Data, Samples or other similar submittals, the Contractor shall review the rejection and re-submit such Shop Drawings, Product Data, Sample or other similar submittal in accordance with the Architect's instructions. 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 five (5) calendar days. No claim for delay or cost shall be accepted as a result of rejected documents.

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§ 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, who shall comply with reasonable requirements of the Owner regarding qualifications and insurance, and 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.

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§ 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.

§ 3.12.12 When professional certification of performance criteria of materials, systems or equipment is required of the Contractor, the Architect shall be entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such calculations and certifications, provided, however, if the Architect, in its reasonable and professional judgment considers it advisable, the Architect shall verify the accuracy and completeness of any and all such calculations and/or certifications. In the event any and all such calculations and/or certifications are found to be inaccurate and/or incomplete by the Architect, the Contractor shall assume full responsibility and shall bear all costs attributable or related thereto, including, without limitation, the expense of the Architect's additional services associated with the verification of such calculations and/or certifications and the expense of the Architect's additional service made necessary by the failure of such calculations and/or certifications to be accurate or complete.

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

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

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

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

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§ 3.12.13.3 Each shop drawing submission cover sheet shall indicate the number of times the submittal has been submitted (e.g., whether first, second, third, etc.).

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

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

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

§ 3.12.15 All samples for any architectural, plumbing, mechanical or electrical work must be submitted to the Architect through the Construction Manager. Samples shall be delivered to the Construction Manager's jobsite trailer with submission cover sheet. Samples shall be properly labeled with the following information: project name and location; name, finish, and composition of material; location of where material is to be used; and labels large enough for approval stamp. Samples will be reviewed by Architect within five (5) calendar days; some samples may require added mock-up.

§ 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

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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. This condition shall apply throughout construction.

§ 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 Contractors, Subcontractors, suppliers and their employees shall not converse with school employees, students and or local residents. Any construction employees found doing so will be removed from the site. NO COMMUNICATION BETWEEN WORKERS AND STUDENTS WILL BE TOLERATED

.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.

.8 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.

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.9 Use of the existing building facilities during construction is prohibited, specifically including toilet rooms, telephones and water fountains.

.10 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.

.11 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.

.12 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.

.13 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,

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visitors and others. Each person without a badge shall be ordered to leave the Owner's property. The Contractor and its Subcontractors employing the offending person(s) shall be solely responsible for making up and paying for any loss production or required progress in the Work resulting from this action (including any claims by other Contractors dependent on the work of this Contractor).

.14 No asbestos containing products are to be used anywhere on this Project.

.15 No lead containing products are to be used anywhere on this Project.

.16 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.

.17 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.

.18 (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.

.19 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.

.20 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.

.21 The Contractor is responsible for cleaning its own materials and debris. Failure to maintain a clean work site daily will result in others performing the work at the Owner's request, and the Contractor will be back charged for the cleaning cost plus construction administration fees. This may be done without the typical 3-day notice to the Contractor.

.22 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.

.23 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.

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.24 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.

.25 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.

.26 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.

.27 The Contractor shall submit a weekly work schedule indicating workdays, work hours and manpower allocation.

.28 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

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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.

.29 The General Construction Contractor shall be responsible for maintaining all appropriate site safety signage.

.30 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.

.31 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.

.32 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.

.33 The General Construction Contractor shall be responsible for providing weather-proof protection over all rough openings, including windows.

.34 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.

.35 Manufacturers Material Safety Data Sheets (MSDS) shall be available at the site for all products used in the Project.

.36 No weapons are permitted on the Owner's property by law.

.37 No Contractor, Subcontractor, nor any person on their behalf shall, in any manner, engage in discrimination, intimidation or harassment of any person on the Project site.

.38 Proper attire is required for personal safety and clothing must not sexually explicit or contain messages of a vulgar nature, disrespectful of ethnic or religious groups, or which promote the use of tobacco, alcohol or drugs.

.39 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.

.40 The Contractor shall provide all barriers and protection as required to safeguard the work, traffic to and from the site, the public and the occupants of the building(s) at or adjacent to the Project site(s) during construction. Contractor shall comply with all fire code regulations during construction. While the Owner may have security guards patrolling its properties, this does not release or otherwise mitigate the Contractor's responsibility to protect material, vehicles and equipment stored at the Project site(s) from theft, damage or other adversity or the Contractor's responsibility to ensure the safety and security of the construction areas.

.41 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.

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.42 The Contractor is required to protect its own Work and work areas, preconstruction, during construction and post construction.

.43 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.

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

.45 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 responsible for the damage.

.46 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.

.47 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.

.48 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.

.49 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 the 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. The Contractor shall immediately notify the Owner in writing, through the Construction Manager, if during the performance of the Work, the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

.50 The Contractor shall perform the Work of the Project with no interruption to the Owner's operations. Any work which will interfere with the Owner's operations shall be performed after regular school hours, and/or during weekends, holidays or other times when the Owner's facilities are not in session for students at no additional cost to the Owner. All costs incurred by the Owner to make the facilities available during those times shall be borne by the Contractor, including time charges incurred for the Owner's own forces and additional charges of the Construction Manager. The Owner reserves to itself the right to determine what work will "interfere" with its operations and said determination shall be final.

§ 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 Section 9.9.

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§ 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. Methods of dust and fume control shall include, but not be limited to:

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

§ 3.13.9 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.

§ 3.14.4 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.

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§ 3.14.5 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.

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

§ 3.14.7 All cutting and patching work shall be done by the Contractor (or through the appropriate Subcontractor). Patches in finish surfaces shall match the adjacent surfaces in material, finish, detail, and quality. Patches in fire rated construction or construction required to be smoke tight shall be made in conformance with assemblies designed and tested by agencies recognized by governing codes. Any UL rated fire-safe materials, flanges, or other materials required by the Code, the Contract Documents, or manufacturer's installation instructions for devices penetrating the work affected shall be applied and installed by an approved firestop subcontractor or qualified personnel from the applicable trade.

§ 3.14.9 All costs caused by defective or ill-timed work shall be borne by the party responsible thereof.

§ 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.

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§ 3.15.1.1 Each Contractor shall be responsible for cleaning their rubbish daily and removing all rubbish from the interior and exterior site weekly or when otherwise requested by the Owner. The General Contractor shall broom sweep all construction areas at least every Friday. Surfaces shall be left clean of mortar and paint spots and the like. The Contractor shall work in a condition approved by the Construction Manager. An inspection will occur on Friday afternoon and failure to properly clean will result in the Owner engaging a cleaning company each time the requirement is not met, without prior notification to the Contractor.

§ 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.

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

§ 3.15.4 Refer to Section 017400 for additional cleaning requirements.

§ 3.15.5 Final Cleaning

- **A.** General: General cleaning during construction is required by the General Conditions and included in Division 01.
- **B.** Final Cleaning: Clean each surface or unit to the condition expected in normal commercial building cleaning. Comply with manufacturer instructions. Complete the following cleaning operations before requesting inspection for Certificate of Substantial Completion.
    1. Clean transparent materials including glass in doors windows. Replace any damaged glass.
    2. Clean exposed finishes to a dust free condition, free of stains, films, fingerprints and similar foreign substances. Clean floors as recommended by the manufacturers if new, if existing carpeted floors shall be vacuumed and wood, ceramic tile and vinyl tile floor floors shall be mopped.
    3. Wipe surfaces of mechanical and electrical equipment. Remove excess lubrication and other substances. Clean plumbing fixtures to a sanitary condition. Clean light fixtures and lamps.
- **C.** Removal of Protection: Remove temporary protection and facilities installed for protection of work during construction unless otherwise directed by the Owner, Architect or Construction Manager.
- **D.** Compliance: Comply with authorities having jurisdiction and safety standards for cleaning. Do not burn

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waste materials. Do not discharge volatile, harmful or dangerous materials into drainage systems. Remove waste materials from the site and dispose of in a lawful manner.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located. 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 Contactor 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, the State of New York 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, the State of New York, 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."

§ 3.18.1.1 The Owner's right to indemnification shall in no way be diminished, waived or discharged by the exercise of any other remedy provided by the Contract Documents or by law or equity.

§ 3.18.1.2 The Owner may withhold from an offending Contractor's Contract Sum an amount sufficient to cover any damages sustained by person or entity indemnified by the Contractor pursuant to this Section 3.18 and all expenses

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and costs associated with the damage sustained.

§ 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 indemnity obligations under this Section 3.18 shall, but not by way of limitation, specifically include all claims, fines, penalties and judgments which may be made against the Owner, the Architect, the Construction Manager and their respective consultants, officers, directors, officials, employees, servants and agents under any applicable statute, rule, regulation or ordinance, including the New York State Labor Law, the New York State Occupational Safety and Health Act, the Federal Occupational Safety and Hazardous Act and similar laws of other governmental bodies having jurisdiction over the Owner's property or Project due to the method of execution of the Work of the Contractor or its Subcontractor(s) or their respective officers, directors, employees, contractors, suppliers, servants, agents or any person or firm directly or indirectly engaged by such Contractor or Subcontractor.

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§ 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, lawsuits, or other proceedings brought against Indemnitees as a result of liens or security interests of any type arising from the Work and filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees.

§ 3.18.6 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 Documents.

§ 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.

§ 3.18.8.1 Whenever any party to the Contract is required in words or substance to indemnify or hold harmless another party, whether or not the following is expressly included in whole or in part in the paragraph or section with regard to such particular indemnification and hold harmless provision, such indemnification and hold harmless provision shall include, but not be limited to, the payment or reimbursement of all judgments, claims, damages, losses, fees costs and expenses and litigation costs and expenses, including but not limited to, the reasonable fees of its attorneys and witnesses.

§ 3.18.8.2 Whenever the Contractor is required in this Section 3.18 or any other provision of the Contract Documents to defend the Owner, the Owner's Board of Education, the Architect, or the Construction Manager or their respective consultants, officers, directors, officials, employees, servants and agents (the "Indemnitees") against any

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claim, action, or proceeding, in the event the Contractor shall fail or refuse to defend any one or more of the Indemnitees, the Contractor shall be liable to such Indemnitee for all costs such Indemnitee incurs in defending such claim, action or proceeding and all costs of such Indemnitee, including attorneys' fees, incurred to recover such defense costs from the Contractor.

§ 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.

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§ 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 its Contract with the Owner.

§ 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.

§ 3.22 Daily Records Clause

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

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

§ 3.22.3 Such daily records shall be copied and provided to the Owner through the Construction Manager at the end of every week.

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§ 3.23 Materials/Finishes
Color selections shall be from the manufacturers specified. If the Contractor submits an equivalent substitution, this substitution shall meet the Architect's specified product in every respect including texture, color, size, shape and finish. Failure to meet these requirements shall result in the Architect's rejection of the Contractor's substitute manufacturer of submitted material.

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 Construction Manager, Architect and Owner. 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.

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§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, 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.

§ 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 (1) during construction; (2) until the date the Architect issues the final Certificate for Payment and (3) with the Owner's concurrence, from time to time during the two year period for correction of the Work. The Construction Manager and Architect have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

§ 4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor to maintain the Project Schedule or for defects and deficiencies in the Work. This reimbursement may be deducted from payments due the Contractor by Change Order, Construction Change Directive, or back charge.

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

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule. The Contractor shall participate with other Contractors and the Construction Manager, the Architect and Owner in reviewing their construction schedules when directed to do

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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 and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work on behalf of the Contractor or Subcontractor.

§ 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.

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§ 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 13.4.2 and 13.4.3, 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

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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, Allowance Disbursements and Construction Change Directives. Architect will prepare all AIA Documents G709 and G733 documents associated with the abovementioned.

§ 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, in consultation with the Construction Manager, 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.

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§ 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. If no agreement is made concerning the time within which interpretations of information requested of the Architect shall be furnished in compliance with this Section 4.2, then no delay may be claimed by the Contractor based on the failure of the Architect to furnish such interpretations or information if they are provided within 15 days after the Architect's receipt of the request.

§ 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

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manner of doing the Work.

§ 4.2.19 The Architect's decisions, after consultation with the Owner and/or Construction Manager, 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.

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.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection. Failure to object to a manufacturer shall not constitute a waiver of any of the requirements of the Contract Documents and all products furnished by the listed manufacturer must conform to such requirements. Refer to Instructions to Bidders, for requirements for delivery of "Contractor's Subcontractor List" to Construction Manager after receipt of bids and before award of the Contract. The Contractor shall also provide the names of persons or entities proposed as manufacturers and names of proprietary products.

§ 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. No increase in the Contract Sum shall be allowed if both the Owner and the Architect have a reasonable objection to a Subcontractor. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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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.

§ 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. All subcontracts over Five Thousand Dollars ($5,000.00) shall be in writing with copies of written subcontract provided to the Owner upon request.

§ 5.2.7 The Contractor shall, prior to any work being performed, obtain and provide to the Owner and Construction Manager, a copy of each Subcontractor's Contractor Certificate of Registration obtained through compliance with Section 220-i of New York Labor Law.

§ 5.3 Sub contractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, 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 agreement between the Contractor and Subcontractor shall not provide, nor shall the Contract Documents be interpreted to provide, any rights, remedies or redress by the Subcontractor(s) against the Owner.

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§ 5.3.1.1 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.

§ 5.3.1.2 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.

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

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

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

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

§ 5.3.4 All Subcontracts over $5,000.00 shall be in writing.

§ 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, except for sums due and owing by Contractor under the subcontract for work performed or material supplied prior to receipt of the Owner's notice of its determination to accept the subcontract. The Owner shall only be required to compensate the Subcontractor of an accepted subcontract for compensation accruing to such Subcontractor for Work done or materials delivered after the date on which the Owner provided notice of its determination to accept the subcontract. All sums due and owing by the Contractor to the Subcontractor of an accepted subcontract shall constitute a debt between the Contractor and Subcontractor.

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§ 5.4.2 It is agreed and understood that the contingent assignment of subcontracts is part of the consideration to Owner for entering into the Contract with Contractor and may not be withdrawn prior to Final Completion or Termination of all remaining Work of the Contractor pursuant to Section 14.4 hereof. The Contractor shall deliver acknowledgement in form and substance satisfactory to Owner from each Subcontractor of the contingent assignment of subcontracts described herein no later than ten (10) days after the date of execution of each subcontract.

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

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

§ 5.5 Owner Payment to Subcontractors

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

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

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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 includes 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 operations on site, and with Separate Contractors retained under Conditions of the Contract identical or substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor. All Contractors, including the Owner's Separate Contractors, shall cooperate with each other in the installation and construction of each contractor's work. All Contractors shall control and coordinate the work of their subcontractors, if any.

§ 6.1.3 The Owner reserves the right to perform work on any phase of the Project through a Change Order or Construction Change Directive when the established Milestones become jeopardized due to the Contractor's inaction. Inaction includes, but is no limited to, failure to staff the work properly, failure to prosecute approved submittals, failure to prosecute contracts and purchase orders, and other acts or omissions which are deemed by the Owner to be in the best interest of the Work.

§ 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.

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§ 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 To the fullest extent allowed by law, 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

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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 improper actions, delays, improperly timed activities or defective construction. Additionally, Owner is not responsible for damages caused or costs incurred by Separate Contractors or other Contractors due to but not limited to Contractor's and/or Contractor's subcontractor negligence. Failure to provide such reimbursement shall entitle the Owner to deduct such costs from the payment(s) due the Contractor until the Owner has fully recovered such costs.

§ 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 Contractors, 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.

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§ 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 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner, Separate Contractor or other Contractor, the Contractor shall, prior to proceeding with that portion of its Work, promptly report to the Architect and Construction Manager apparent discrepancies or defects in such other

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construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report such condition shall constitute an acknowledgment that the Owner's, Separate Contractor's or other Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.

§ 6.2.12 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 Separate Contractor(s) or 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. If the Owner is not reimbursed promptly for such costs, the Contractor's share of such costs shall be deducted from the next payment to the Contractor.

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 deduct or 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 or the Construction Manager.

§ 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 or the Construction Manager 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 by the Architect or the Construction Manager in writing. Field Orders are not to be construed as Change Orders. A signed field order is not an approved Change Order. Failure to proceed with a field order, which will adversely impact the completion of the Project or delay the work of another contractor, shall be just cause for the Owner taking over the Work, or termination of Contract.

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§ 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 or Construction Change Directive.

§ 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

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work by issuing AIA Document G709. 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 requested and 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 & field office expense;
- **.2** travel expense;
- **.3** site supervision;
- **.4** project management, estimation & administration; 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.

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§ 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 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 not to exceed fifteen percent (15%) of the cost of the Work as set forth in Section 7.3.11, and an appropriate Change Order has been executed by all parties. The Contractor shall submit detailed quotations for Subcontractors and material suppliers. If the Changes in the Work involve Subcontractor labor and material only, the Subcontractor is entitled to ten percent (10%) overhead and profit and the Contractor is permitted five percent (5%) profit on the work of its Subcontractor. Changes in the Work when not involving additions or deletions from the Contract Sum shall not be made until the Construction Manager 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

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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 at 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 Architect or 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. In addition, a Construction Change Directive may also constitute a directive to the Contractor directing the performance of Work in accordance with the Contract Documents. 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. Furthermore, the Owner may by Construction Change Directive, without invalidating the Contract, order performance of Work in accordance with the Contract Documents at the discretion of Owner, Construction Manager and Architect.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order or to direct the Contractor to remedy its nonconforming or defective Work. 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, or due to the Contractor's failure to perform the Work in accordance with the Contract Documents, the Architect or Construction Manager shall issue a Construction Change Directive directing the Contractor to proceed with the disputed Work or correct defective Work and, if applicable, reflecting the addition to or reduction of the scope of the Contractor's Contract and the corresponding change in the Contract Sum or Contract Time, if any.

§ 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.

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§ 7.3.2.2 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 Work 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);

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.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;

.4 As provided in Section 7.3.4 subject to the limitations of Section 7.3.11; or

.5 As provided in Section 7.3.2.1.

§ 7.3.4 If the Construction Change Directive provides for a reasonable expenditure and savings method of adjusting 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, 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. Sales taxes, if any are required, shall be indicated and added after the cost of the change is calculated. No overhead or profit will be paid on sales tax;

.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. The Contractor shall submit with its proposal actual invoices from its insurance broker reflecting actual additional costs associated with the procurement of bonds and insurance. Bond premiums and/or credits shall be invoiced per Change Order. Lump sum bond premium requests will not be considered at the end of the Project.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the 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 strict 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.

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§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work 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 assert a Claim in accordance with Article 15.

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§ 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** Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.4.
- **.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 & field office expense;
  - **.2** travel expense;
  - **.3** site supervision;
  - **.4** project management, estimation & administration;
  - **.5** small tools & equipment;
  - **.6** research & layout;
  - **.7** inspections & permits;
  - .8 material handing;
  - **.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. The work included in such order shall be performed by the Contractor at no additional cost to the Owner and shall not form a basis for a claim for an extension of the Contractor's time to complete its Work. A signed minor change in the Work is not and does not constitute an approved change order. 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. The Contractor shall perform the work included in such orders so as to cause no delay to its Work and/or the work of other Contractors in connection with the Project.

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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.

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§ 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.

§ 8.1.6 The Date of Final Completion of the Work is the date all of the Work required by the Contract Documents is complete, all required materials and documents have been delivered to the Owner, and all applicable licenses, permits, certificates, or approvals have been obtained for the Owner's beneficial use of the Project.

§ 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.

§ 8.2.1.1 The Contractor recognizes that the Project Schedule is of critical importance to the Owner and that failure by the Contractor to complete the Work in accordance with the construction schedule may cause significant damages to the Owner, including but not limited to the loss of State Aid from the State Department of Education. All aspects of construction including milestone dates must reflect a "time is of the essence" construction strategy. The "Bid Schedules" serve as a guide of critical milestone dates to the Project. Failure to meet intermediate milestone dates will jeopardize the overall Project Schedule. If the Contractor's performance of the Work evidences, to the Owner, Construction Manager or Architect, that timely completion may be in jeopardy, this will mandate the Contractor to increase staff, work overtime, or use other means to recover time, at the costs of the Contractor responsible for such delays. In addition, all costs due to delays in completion of the Work shall be borne by Contractor(s) responsible for delays.

§ 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. All bonds, insurance, and fully executed Contract are required for commencement of Work.

§ 8.2.2.1 The Contractor shall not commence Work on the Site until two (2) certified copies of all insurance policies as set forth in Article 11, attesting that the required coverage is in force and is in compliance with NYSIR, have been received and accepted by the Owner.

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

§ 8.2.4 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 is not maintaining the pace of the Work in accordance with the approved construction schedule or otherwise consistent with the Contract Time, and such delays are not excusable as set forth in Section

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8.3, then the Owner may require the Contractor to undertake a time recovery plan (including more personnel, overtime and/or additional shifts) at the Contractor's sole expense, to reasonably assure substantial and final completion of the Work within the Contract Time.

§ 8.2.5.1. In the event the Owner determines that the performance of the Contractor's work, as of a milestone date, has not progressed or reached the level of completion required by its contract, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the Contractor progresses its work in compliance with the stage of completion required by its agreement with the Owner. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

§ 8.2.5.2. The Contractor shall not be entitled to an adjustment in its contract sum in connection with Extraordinary Measures ordered by the Owner under or pursuant to this Subparagraph 8.2.5.

§ 8.2.5.3. The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 8.2.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of its work will comply with any milestone date or completion date set forth in the project construction schedule / Contract Documents.

§ 8.2.5.4. The Owner reserves the right to withhold payment from the Contractor until such time as the Contractor submits a daily schedule showing work to be again on schedule with the construction schedule and/or until its work is being installed according to the Project construction schedule, without additional cost to the Owner.

§ 8.2.6 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 dates of Substantial Completion or final 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 Contractor further acknowledges that these amounts are in addition to any and all liquidated damages as specified in Section 8.4.2. 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.

§ 8.2.6.1 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 workdays 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.

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

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§ 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 potion 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.

§ 8.2.9 The Owner may request the Contractor to work overtime to expedite the completion of the Work or a portion of the Work, at a time when the Contractor is not behind schedule or otherwise in default of any of the provisions of the Contract. The Contractor agrees to work said overtime, and the Contractor shall be reimbursed only for the Contractor's extra labor cost over the amount of regular time during the period of such overtime, including additional fringe benefit costs, insurance and taxes incurred by it with respect thereto and only those other actual costs of the Contractor directly related to said overtime, which have been approved in advance by the Owner. Time slips covering said overtime must be submitted to the Owner on a daily basis for checking and approval. The Contractor shall not be compensated for any lost efficiency or production alleged to have resulted from said overtime work.

§ 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, 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 or Construction Manager 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. The extension of time provided under this Section 8.3.1 shall be the Contractor's exclusive remedy.

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§ 8.3.1.1 When changes or delays are experienced, the Contractor shall submit to the Construction Manager a Time Impact Analysis illustrating the influence of each change or delay on the current Contract scheduled completion date. Each time analysis shall include a Fragnet (network analysis) demonstrating how the Contractor proposed to incorporate the change or delay into the Schedule. Additionally, the analysis shall demonstrate the time impact based on the date the change was given to the Contractor, the status of construction at the point in time, and activity duration of all effected activities. The activity duration used in this analysis shall be those included in the latest update of the Schedule, closest to the time of delay or as adjusted by mutual agreement. Each Time Impact Analysis shall be submitted within five (5) calendar days after a delay occurs or a notice of change order is given to the Contractor. In cases where the Contractor does not submit a Time Impact Analysis for a specific change or delay with a specified period of time, it shall be mutually agreed that no time extension is required. Final evaluation of each Time Impact Analysis by the Construction Manager shall be made within fourteen (14) calendar days after receipt unless subsequent meetings and negotiations are necessary. Adjustments in the Contract time for performance shall be made only by written change order approved by the Owner. Upon approval of the Owner, Fragnets illustrating the influence of changes and delays shall be incorporated into the Schedule by the contractor during the first update after agreement is reached. The time difference between the Early Finish date and the Late Finish date is defined as "float." The "float" belongs to the Project and may be used by the Construction Manager to benefit the Project. Changes or delays that influence activities in the network with "float" and do not extend the Critical Path (the network of activities with zero days "float") shall not be justification for an adjustment in Contract time for performance. 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

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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) calendar 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 through no fault of the Contractor or anyone for whom the Contractor is responsible, 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, unavailability of labor, materials or equipment, delays 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 The Owner shall not be liable to the Contractor and/or any Subcontractor for claims or damages of any nature caused by or arising out of delays. The sole remedy against the Owner for delays shall be the allowance of additional time for the completion of the Work, the amount of which shall be subject to the claim 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; directions given or not given by the Owner, Construction Manager or Architect, including scheduling

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and coordination of the Work; the Architect's preparation of drawings and specifications or review of shop drawings and requests for instruction(s); or, on account of any delay, obstruction or hindrance for any cause whatsoever by the Owner, Construction Manager, Architect, or any other contractor on the project, whether or not foreseeable or anticipated. The Contractor agrees that its sole right and remedy therefor 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, OR ARCHITECT BASED ON ANY REASON AND THAT THE CONTRACTOR'S SOLE REMEDY, IF APPROPRIATE, IS ADDITIONAL TIME.**

§ 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.

§ 8.3.8 The Contractor understands that the timely prosecution of its obligations under the Contract is essential to the efficient completion of the Project and may have a direct bearing on the costs incurred by all other Contractors and Separate Contractors. The Contractor's obligations in this regard include, but are not limited to: 1) completing the Work in an orderly fashion and in accordance with an agreed upon progress schedule; 2) timely coordination and cooperation with the Owner, the Architect and the other Contractors and Separate Contractors to resolve disruptions, interferences or other problems as they arise; 3) providing sufficient personnel, systems and procedures to ensure that required materials, supplies and skilled human resources are available so that the Work is timely understood, anticipated, progressed and communicated where required to others involved with the Project; 4) maintaining accurate job progress schedules and systems; 5) timely notifying others working on the site when delays or interferences occur that will affect the Contractor's or other's work pertaining to the Project; 6) providing a skilled, informed and properly supported superintendent at the Project sites and at all required job meetings to provide meaningful information and commitments to efficiently cooperate in coordinating the work of the various contractors; and 7) timely reviewing all job minutes, correspondence and other communications and responding to same when required.

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§ 8.3.9 The Contractor agrees that its failure to timely cooperate and proceed can substantially increase the costs of other Contractors and Separate Contractors in attempting to timely prosecute their obligations under related contracts. Accordingly, the Contractor recognizes that other Contractors and Separate Contractors on the site are third-party beneficiaries of the Contractor's obligation to timely coordinate and prosecute its obligations under the Contract Documents. The Contractor hereby waives and shall not raise as a defense the absence of privity of contract between the Contractor and the other Contractors and Separate Contractors in any claim hereafter asserted by other Contractors or Separate Contractors to recover costs or damages for delay or interference and shall be responsible to other Contractors and Separate Contractors on the site for damages caused by the Contractor's failure to timely and properly perform its contractual obligations under the Contract Documents.

§ 8.4 Liquidated Damages

§ 8.4.1 The Contractor realizes that time is of the essence on this Contract and the Construction Schedule shall be submitted per Article 3.10 included herein. In the event the Contractor fails to submit a Construction Schedule by said date, the sum per calendar day of FIVE HUNDRED DOLLARS ($500) will be subtracted from the Contract Sum due the Contractor in the form of a change order.

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§ 8.4.2 The 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 Owner'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 ONE THOUSAND DOLLARS ($1000) 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, quarantine restrictions, 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 provision unless approved by the Owner in writing.

§ 8.4.3 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. The Owner's findings of fact will be final and binding on any litigation.

§ 8.4.4 The said sum per calendar day shall constitute the Liquidated Damages incurred by the Owner for each day of delay beyond the agreed upon dates of Substantial Completion. Such Liquidated Damages shall be in addition to any other damages (other than by reason of delay) the Owner may incur as a result of the Contractor's breach of Contract.

§ 8.4.5 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 regular school hours. Such work shall only be performed after regular 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 after the Substantial Completion Date (as well as Milestone Dates) stated in the Contract Documents for its own employees to make the Owner's property and facilities accessible to the Contractor beyond regular school hours and incurred by the Owner for Construction Manager services and Architect services performed for the Project due to the Contractor's failure to complete its work by the Substantial Completion Date (and Milestone Date) stated in the Contract Documents, including but not limited to the additional costs incurred for extending the duration of their services and for performing inspections after regular school hours or on Saturdays, Sundays or holidays.

§ 8.4.6 All costs incurred by the Owner, Owner's Representative, Architect, Architect's consultants, for the cost of additional inspections, at the rate of ONE THOUSAND DOLLARS ($1,000) 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 each day of delay for extended Construction Management time will be charged to the Contractor causing the delay.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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§ 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.

§ 9.1.3 Each Application for Payment shall include such instruments, evidence, and materials as Owner, Construction Manager, and Architect may deem necessary to substantiate the value of completed work for which payment is sought, including, without limitation, such requisition forms, disbursements requests, lien waivers, indemnities (including evidence of All Risk physical damage insurance coverage on materials and equipment stored off-site), and undertaking as they may specify and an estimate of the total labor done and materials stored at the site (or other location approved in writing by the Owner) or installed in the building, less cost for which payment has

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been made, and also less retainage. All Applications for Payment shall be made on or in compliance with a form acceptable to Owner and Architect. Contractor shall supply such additional documentation and information as the Owner, the Construction Manager and/or the Architect may request in connection with each Application for Payment of the Contractor.

§ 9.1.4 If the Owner is entitled to reimbursement or 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 payment due to the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work of the Contractor, 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 payments then or thereafter due the Contractor form Owner or (2) issue through the Construction Manager a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 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.

§ 9.2.4 The Contractor shall include in its contract sum all allowances stated in the specifications. However, the Contractor's costs for unloading and handling at the site, overhead, profit and other expenses contemplated for the stated allowance amounts shall be included in its contract sum and not in the allowances.

§ 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, certified payroll for employees of the Contractor and employees of Subcontractors performing work on the Project, and such other information required by the Owner. 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.

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§ 9.3.1.1 Each Application and Certificate of Payment shall be accompanied by the following documentation:

.1 A current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;

.2 Duly executed waivers of public improvement liens from all Subcontractors and material suppliers and lower tiered Subcontractors or material suppliers establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and AIA Form G706 or G706A;

.3 Certified payroll for employees of the Contractor and employees of Subcontractors performing work on the Project; All employees of the Contractor and employees of Subcontractors must attach a copy of proof of completion of the OSHA 10 course to the first certified payroll and on each succeeding payroll where any new or additional employee is first listed.

.4 Copies of invoices submitted to the Contractor by its subcontractors and/or material suppliers; and

.5 Such other information which the Owner, Construction Manager and/or the Architect request the Contractor furnish in connection with its Application for Payment.

§ 9.3.1.2 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.

§ 9.3.1.3 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.

§ 9.3.1.4 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.

§ 9.3.1.5 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, upon submission of the Certificate of Substantial Completion, 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 and the amount required to be withheld by directive or order of the NYS Department of Labor (NYSDOL) or the Commissioner or a Hearing Officer of NYSDOL.

§ 9.3.1.6 The Contractor and its Subcontractors are required to submit certified payroll information to the Owner in accordance with New York State Law.

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

§ 9.3.1.8 Application for Payment that, when received, are missing information or required documentation will be rejected by the Construction Manager or Architect and will not be considered for payment by the Owner, Architect or Construction Manager until resubmitted with all required information and documents.

§ 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

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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.

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§ 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 shall save and keep the Contract Sum and the Owner's property free from all liens and claims, legal or equitable, arising out of Contractor's work under the Contract Documents. In the event any such lien is filed by anyone claiming by, through or under the Contractor, the Contractor shall remove and discharge same with ten (10) days of the filing thereof. To the maximum extent permitted by law, 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

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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.

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

§ 9.4 Certificates for Payment

§ 9.4.1 Contractor's Application for Payment is to be submitted to the Construction Manager not later than the 25th day of the current month. Application for Payment shall be reviewed by Construction Manager and Architect within two (2) business days of receipt and promptly returned to Contractor for modification and/or final acceptance. All required supporting information and documentation required by the Contract Documents are to be returned in entirety with the executed Final Application for Payment not later than the 5th day of the following month. If an Application for Payment is received by the Construction Manager after the application dates fixed above, the Application for Payment will be deemed late. A late Application for Payment will then be considered complete on the 25th day of the next applicable month. No additional notifications or time extensions will be given pertaining to Contractor's Application of Payment.

§ 9.4.2 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, as provided in Section 9.5.1.

§ 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

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Architect is able to make such representations to the Owner. Because of subsequently discovered evidence or subsequent observation, the Construction Manager or Architect may also withhold a Certificate for Payment or 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 the Contractor's Contract with the Owner.

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. The Owner shall not be deemed in default by reason of withholding payment while any conditions in Section 9.5.1 remain.

§ 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

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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 when payment is made or the Certificate for Payment is rejected.

§ 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, through the Construction Manager, 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

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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.

§ 9.6.8 To the extent required for an effective warranty on a roofing project, the Contractor shall supply with each requisition a letter signed by the manufacturer stating that the work performed by the Contractor has been inspected by the manufacturer, and that the work performed to date has been installed as per their specification and is warrantable.

§ 9.7 Intentionally omitted

§ 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.

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§ 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

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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;
- **.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; and
- **.4** all required closeout documents.

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§ 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

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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, nor does it waive the Owner's right to liquidated damages. Further such occupancy alone shall not determine when Substantial Completion has been reached.

§ 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.

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§ 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 two-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

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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) confirmation that all start-up, testing, balancing and commissioning of systems, equipment and other materials has been successfully completed as required by the Contract Documents, (3) 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, (4) 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, (5) 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, (6) consent of surety, if any, to final payment, (7), 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 (8) 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.

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§ 9.10.4 The making of 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 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.

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§ 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.

§ 10.1.1 Prior to beginning any Work, the Contractor shall submit a copy of its corporate safety plan to the Owner and the Construction Manager. Two (2) weeks after receipt of the Notice to Proceed, the Contractor shall provide a site safety logistics plan to the Construction Manager. The site safety logistics plan should minimally include locations of the temporary fence and gates, traffic plans for deliveries and removals, refuse container locations, crane locations, pick locations, boom radium, and lift locations, stockpiles, toilet locations, site water and power locations, and safety. This plan shall also show the location of all staging and storage areas, clearly separating construction and school areas. The logistical information represented by the construction documents shall serve as a minimal guide. The Contractor is required to submit its corporate safety policy within ten (10) days of receipt of the Notice to Proceed. Said policy must at a minimum meet OSHA standards and define details concerning the maintenance of a safe work environment. The Contractor shall make the participation of its Subcontractors in its safety program mandatory. A list of key personnel, with addresses and telephone numbers for emergency purposes shall be forwarded to the Construction Manager and Architect. The Owner and the Construction Manager shall establish a fire coordination procedure and shall forward same to the Contractor for its use during the performance of its Work.

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§ 10.1.2 Where solvents, chemicals, etc. are used in the installation and/or cleaning of materials or equipment under this Contract, which might cause injury or sickness to an employee or occupant of the building, they will be used in strict conformance with the manufacturer's direction, material data safety sheets (US Department of Labor Form OSHA 20) in the handling, storage and application of such materials shall be obtained by the Contractor and strictly adhered to. Every precaution shall be taken to prevent seepage of toxic fumes into the building. All hazardous waste material shall not be deposited in any dumpster, in any drain, or any part of the site, but shall be collected in a container specifically authorized by the EPA for the collection of said material, transported in accordance with DOT regulations and legally disposed of. Permits will be obtained for storage, treatment and disposal of all hazardous materials.

§ 10.1. The Contractor shall provide its own COVID-19 Safety Plan to the Owner prior to the start of any work. The Contractor shall designate a person on its staff to be responsible for monitoring the wearing of PPE by each person on site working with or for the Contractor. The Contractor shall strictly follow and ensure that its subcontractors follow the Contractor's COVID-19 Safety Plan as well as all applicable Center for Disease Control guidelines and federal, state and local orders and directives.

§ 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

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.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.

§ 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 haphazardly 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 Construction Manager 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.

§ 10.2.1.7 Some of the proposed work may require various contractors to enter crawlspace/pipe tunnel areas, and/or access plenum spaces associated with the existing ceiling and wall systems (Typical Throughout). Please be advised that these spaces may contain asbestos and asbestos contaminated materials. Any disturbance of such may result in the release of airborne asbestos fibers, therefore potentially creating a hazardous condition to the workers.

§ 10.2.1.8 In accordance with 40 CFR part 763, all Contractors associated with the Project are warned of the presence of asbestos containing, and potentially asbestos contaminated, materials within these spaces, and the potential hazard associated with the disturbance of these materials. Each Contractor is required to have workers "certified and licensed to work in an asbestos hazard environment" to fulfill their contract requirements in these areas as part of their base bid.

§ 10.2.1.9 The Contractor is to notify the Owner's representative when work will be undertaken in crawl spaces, plenum areas etc., so that an independent monitoring firm can be available to monitor the activities within these spaces.

§ 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.

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§ 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

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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.

§ 10.2.2.4 The Contractor and its Subcontractors shall provide blankets and auxiliary fire protection as part of its construction safety program to prevent damage to adjacent work or materials as a result of its welding or burning operations. Additionally, as part of its construction safety program, the Contractor and its Subcontractors shall provide a fire watch, with a fire extinguisher, which is acceptable to the Owner and the Construction Manager.

§ 10.2.2.5 The Construction Manager and/or Owner reserve the right to have all operating equipment periodically inspected by an independent inspector whose finding will be binding. The Contractor, at its own expense, must make corrections within two (2) working days of receiving a written report identifying any deficiencies.

§ 10.2.2.6 All flagmen required for deliveries to the site are to be furnished by the Contractor or its Subcontractors responsible for the delivery. Any and all deliveries crossing the site or student traffic areas shall be escorted by flagmen. All flagmen shall wear orange vests.

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

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

§10.2.4.1 When use or storage of hazardous materials, substances or equipment, or unusual methods is necessary for execution of the Work, the Contractor shall give the Owner and Construction Manager reasonable advance notice. If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Section 10.2 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. The Contractor shall take all necessary steps to prevent its employees from disturbing and/or damaging the facility and shall be responsible for preventing the escape of fires set in connection with the construction. The Contractor shall notify its employees and subcontractors of the location of the nearest fire alarm box at all locations where the work is in progress. On a weekly basis, the Contractor shall submit to the Construction Manager and Architect minutes of its safety meetings, which minutes shall include a list of the individuals present at such meetings.

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§ 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.

§ 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 as implemented by New York State, 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 is 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 the Contract to the satisfaction of the Owner, Construction Manager and Architect. The Contractor is responsible for all ground penetrating radar or equivalent means used to scan, observe, probe, discover, locate, and acknowledge any and all underground encumbrances and/or utilities prior to all excavation practices associated with the Work and so noted in the Contract Documents as part of the Work.

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

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injury by any cause.

§ 10.2.18 To the maximum extent permitted by law and not in limitation of any other indemnification obligation in these General Conditions or elsewhere in the Contract Documents, the Contractor and their Subcontractors shall indemnify and hold harmless the Owner, Architect, Construction Manager and any of their respective officers, directors, board members, consultants, agents and employees from any and all claims, damages, losses, suits, obligations, fines, penalties, costs, charges and expenses which may be imposed upon or incurred by or asserted against any of them by reason of any act or omission of such Contractor or any Subcontractor or any person or firm directly or indirectly employed by such Contractor, for any above suits, obligations, charges and/or expenses imposed upon the Owner, Architect or Construction Manager for the act and/or omissions of any Contractor or Subcontractor that resulted in an incident and/or accident causing personal injury and/or property damage.

§ 10.3 Hazardous Materials

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents 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, lead 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 both verbally and 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.

§ 10.3.1.2 Contractor shall not use products containing asbestos, polychlorinated-biphenyl (PCB) or other toxic substances. The Contractor shall submit, for all materials, Material Safety Data Sheets (MSDS) as outlined in these Conditions.

§ 10.3.1.3 Contractor shall certify that the products, submitted to the Architect for review, specified to be used in the Project, do not contain toxic substances exceeding minimum federal standards and standards of the State in which the work is being performed.

§ 10.3.1.4 Contractor shall further represent that he shall abide by applicable provisions of AHERA, its implementing regulations and any applicable laws, regulations and requirements of the New York State Education Department.

§ 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.

§ 10.3.3 Omitted.

§ 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

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Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.3.7 The Contractor shall notify in writing the Owner and the Construction Manager of any storage, use, or discovery of hazardous or toxic material on the Project site which the Contractor knows of, becomes aware of, or reasonably should know could cause bodily injury or death and of any injury or death attributable to any such hazardous or toxic 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.

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§ 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. Additionally, such equipment and medical facilities are to be within a reasonable distance of the area or multiple areas of the Work performed on the Project site.

§ 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 shall purchase from and maintain in a company or companies licensed and admitted to conduct business in State of New York, having an A.M. Best rating of A:VII or better, and one to which the Owner has no reasonable objection, such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entitles shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project. As required by the New York State Workers' Compensation Law, all out of state contractors working in New York must provide a Workers' Compensation Insurance Policy that specifically lists New York in Item 3A of the Policy Information page;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but obligated by the Contract Documents to provide the insurance required by that section;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

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.7 Claims for bodily injury or property damage arising out of completed operations;

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18;

.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 period. 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 at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Section 12.2.2.2;

.11 Liability insurance (including Umbrella Excess Liability policy) shall include all major divisions of coverage and be on a comprehensive basis. The required coverage shall be written on an occurrence basis and shall include the following:

a. Premises Operations (including X, C and U coverage as applicable).
b. Independent Contractor's Protective.
c. Products and Completed Operations.
d. Contractual, including specified provision for Contractor's obligation under Section 3.18 of the General Conditions.
e. Owned, non-owned and hired motor vehicles.
f. Broad Form Property Damage including Completed Operations.
g. Pollution Legal Liability Insurance.
h. Personal injury liability with Employment Exclusion deleted.

.12 The insurance policies required to be purchased and maintained by the Contractor under this Agreement shall be: (i) written on an occurrence basis, and (ii) shall be primary on a per project basis for the defense and indemnification of any action or claim asserted against the Owner (and its Board, employees and volunteers), Architect, and/or the Contractor for Work performed under the Agreement regardless of any other collectible insurance or any language in the insurance policies that may be to the contrary. The policies of the Owner and Architect and their consultants shall be excess and noncontributory. A New York licensed and admitted carrier is required.

.13 Subcontractors are subject to the same terms and conditions as stated above and must submit same to the Owner for approval prior to the start of any work.

§ 11.1.2 The insurance required by this Article 11 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of three years after final completion of the Work. All coverages are to be written on an occurrence basis unless approved by the Owner. The Contractor will require all of its Subcontractors to comply with the insurance requirements of this Article 11.

§ 11.1.3 ACORD Form 25S shall be an acceptable form for the Certificates of Insurance when accompanied by AIA Form G715 and all applicable endorsements for the required coverages. The certificate of insurance must describe all services provided by the Contractor (e.g., roofing, carpentry, plumbing) that are covered by the liability policies. "Certificate Holders" are the **Eastchester Union Free School District: 500 White Plains Rd Eastchester, NY 10709**. The Contractor shall also provide the Owner with copies of any endorsements subsequently issued amending coverage or limits. At the Owner's request, the Contractor shall provide a copy of the declaration page of the liability and umbrella/excess policies with a list of endorsements and forms. If requested, the Contractor will provide a copy of the policy endorsements and forms. 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. Policy exclusions may not be accepted. No construction shall be commenced until the Owner has approved the Contractor's certificates of insurance and required endorsements. These certificates and the insurance policies required by Section 11.1 shall contain a provision that the coverages afforded under the policies will not be canceled or allowed to expire until at least 15 days prior written notice has been given to the Owner and the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate and a copy of the insurance policy evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Review and acknowledgement of the certificates of insurance and endorsements by the Owner or Architect shall not relieve or decrease the liability of the Contractor hereunder.

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§ 11.1.3.1 The Contractor's failure to procure or maintain insurance required under this Contract, or provide the required proof of such insurance, shall constitute a material breach of the Contract for which the Owner may, in its sole discretion, stop the Work, withhold payment, or suspend or terminate the Contract immediately. In response to such failure the Owner also may, at its sole discretion, procure or renew such insurance necessary to protect the Owner's interests, pay any premiums in connection therewith and recover (or deduct) all amounts so paid, as well as all other costs and fees incurred as a result of such breach, from the Contractor. It shall not be the basis for an extension of the Contract Time if the operations, services or Work is stopped or delayed due to the Contractor's failure to provide the required insurances or proof of same. The foregoing rights and remedies of the Owner are in addition to the Owner's other rights and remedies. The Contractor shall fully cooperate at all times with any effort by the Owner or Architect to audit compliance with the insurance requirements of Article 11. The Contractor understands and agrees that (a) the Owner's receipt of proper certificates of insurance and endorsements from the Contractor shall be a condition precedent to the Owner's obligation to make any progress payment under the Contract, and (b) it shall not be the basis for an extension of the Contract Time if the operations, services or Work is stopped or delayed due to the Contractor's failure to provide proper certificates of insurance and endorsements.

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§ 11.1.3.2 The insurance requirements set out herein are independent from all other obligations of the Contractor under the Contract Documents and apply whether or not required by any other provision of the Contract Documents.

§ 11.1.3.3 Neither the Owner or Architect shall have any duty to the Contractor or to any of its insurers or their insurance agents to review any certificates or copies of insurance furnished by the Contractor or to determine whether the terms of each certificate or policy of insurance comply with the insurance-related provisions of the Agreement. A failure to detect that the Contractor has not submitted certificates, or proper certificates, or is otherwise not in compliance with the insurance-related provisions of the Agreement shall not be considered a waiver or other impairment of any of the Owner's rights under such insurance-related provisions.

§ 11.1.3.4 Waiver of subrogation in favor of the Owner **(Eastchester Union Free School District)** must apply for all policies.

§ 11.1.4 The Contractor shall cause all liability insurance policies (Automobile, General Liability and Umbrella/Excess) coverage required by the Contract Documents (excluding Workers' Compensation and NYS Disability Insurance) to include (1) the Owner and its Board of Education, officers, employees and volunteers, as well as the Architect, the Construction Manager and their respective officers, directors and consultants as Additional Insureds on a primary and non-contributory basis; and (2) the Owner and its Board of Education, officers, employees, agents and volunteers as Additional Insureds on a primary and non-contributory basis. Each Certificate of Insurance must state "All policies provide coverage on a primary and non-contributory basis." If the terms of policies expire, or the lives of the insurance companies terminate, before the Contract is completed or during the period of completed operations coverage, and the Contractor fails to maintain continuance of such insurance, the Owner is entitled to provide protection for itself, to pay premiums, and to charge the cost to the Contractor.

§ 11.1.4.1 Additional insured status for Commercial General Liability coverage shall be provided by standard or other endorsements that extend coverage to the Owner for on-going operations (CG 20 38 or equivalent) and products and completed operations (CG 20 37 or equivalent). The decision to accept an endorsement rest solely with the Owner. A completed copy of the endorsements must be attached to the Certificate of Insurance to include Commercial General Liability, Auto Liability and Umbrella/Excess coverages.

§ 11.1.5 It is expressly understood and agreed that:

- **.1** The amount of insurance provided in the insurance coverages required by Article 11 and any other provision of the Contract Documents shall not be construed to be a limitation of the liability on the part of the Contractor or any of its Subcontractors.
- **.2** Any type of insurance or any increase in limits of liability not described above which the Contractor requires for its own protection or on account of statute or otherwise shall be its own responsibility and at its own expense and shall not be charged back to the Project.
- **.3** The carrying of insurance described shall in no way be interpreted as relieving the Contractor or any Subcontractor of any responsibility or liability under the Contract.
- **.4** In the event of a failure of Contractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Owner shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of the Contractor who agrees to furnish all necessary information thereof and to pay the cost thereof to the Owner immediately upon

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presentation of an invoice.

.5 Any work performed without having the insurance coverage is at the Contractor's own risk.

.6 Any applicable deductibles and self-insured retentions on the policies required by this Article 11 are the sole responsibility of the Contractor. The Contractor agrees to indemnify the Owner for applicable deductibles and self-insured retentions.

.7 There will be no coverage restrictions and/or exclusions involving New York State Labor Law statutes or gravity related injuries.

.8. No policies containing escape clauses or exclusions contrary to the Owner's interests will be accepted.

.9 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.

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§ 11.1.6 Schedule of Insurance

The Contractor and its Subcontractors, at their own expense, shall procure and maintain the following insurance coverages with limits of liability not less than the limits specified, or greater if required by law.

§ 11.1.6.1 Workers' Compensation and Employers' Liability

To comply with the New York State Workers' Compensation Law, the Contractor must (1) be legally exempt from obtaining worker's compensation coverage, or (2) obtain such coverage from insurance carriers, or (3) be self-insured or participate in an authorized group self-insurance plan and provide New York State statutory worker's compensation insurance for all employees. Minimum limitation are:

Workers' Compensation	Statutory
Bodily Injury by Accident:	$1,000,000 Each Accident
Bodily Injury by Disease:	$1,000,000 Each Employee
Bodily Injury by Disease:	$1,000,000 Policy Limit

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.

Employers' Liability with policy limits not less than One Million Dollars ($1,000,000.00) per each employee, and policy limit.

Statutory Workers' Compensation (C-105.2 or U-26.3); and NYS Disability Insurance (DB-120.1) for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable proof of Worker's Compensation or NYS Disability Insurance. A person seeking an exemption must file a CE-200 Form with the state. The form can be completed and submitted directly to the WC Board online.

The workers' compensation and employers' liability policies shall be endorsed to waive the right of subrogation against the Owner and its Board of Education, officers, employees and volunteers.

§ 11.1.6.2 Commercial General Liability

Commercial general liability written on ISO occurrence form providing coverage for Premises and Operations, Products-Completed Operations, Independent Contractors, Personal and Advertising Injury (Employment Exclusion deleted), Blanket Contractual Liability, and Broad Form Property Damage (including coverage for Explosion, Collapse, and Underground Hazards).

Occurrence Form:	
General Aggregate:	$2,000,000 (per project)
Products/Completed Operations Aggregate:	$2,000,000 (per project)
Each Occurrence:	$1,000,000
Personal and Advertising Injury:	$1,000,000
Property Damage (Aggregate)	$2,000,000 (per project)

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Property Damage (Each Occurrence)	$1,000,000
Fire Damage (any one fire):	$100,000
Medical Expense (any one person):	$10,000

The Contractor shall cause the commercial liability coverage required herein to include the Owner and its Board of Education, employees and volunteers, Construction Manager, Architect, and their consultants as additional insureds on a primary and non- contributory basis. Products and Completed Operations Coverage must be maintained for a period of at least three (3) years after final payment and must provide that the Owner and its Board of Education, employees and volunteers is an additional insured on a primary, non-contributory basis for the same period. These limits must apply on a per project basis. The commercial general liability policy shall be endorsed to waive the right of subrogation against the Owner and its Board of Education, employees and volunteers.

§ 11.1.6.3 Automobile Liability

Automobile Liability covering vehicles owned, hired, borrowed and non-owned vehicles used by the Contractor, with combined single policy limits of not less than One Million Dollars ($1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of the vehicles along with any other statutorily required automobile coverage. 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 or CA 01 12 as well as proof of MCS 90. Coverage shall extend for a period of three (3) years following acceptance by the Owner of the Contractor's work (final Payment). The Contractor shall cause the automobile liability coverage required herein to include the Owner and its Board of Education, employees and volunteers, Construction Manager, Architect, and their consultants as additional insureds on a primary and non-contributory basis. The automobile liability policy shall be endorsed to waive the right of subrogation against the Owner and its Board of Education, employees and volunteers.

§ 11.1.6.4 Owner's and Contractor's Protective Liability Insurance

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The Contractor shall procure and maintain at Contractor's own expense until final completion of the Work covered by the Contract, and any extension thereof, Owners Contractors Protective (OCP) Liability Coverage issued in the name of the Owner and covering the liability for damages imposed by law upon the Owner and/or Construction Manager with respect to all operations under the agreement by the Contractor or its Subcontractors, including omissions and supervisory acts of the Owner and Construction Manager. Such policy shall be delivered to the Owner and Construction Manager no later than fifteen (15) days of awarding the Contract. The OCP policy must be with a NYS licensed and admitted carrier. Unless otherwise specifically required by special specifications, each policy shall be issued with limits not less than the following:

- **.1** For projects less than or equal to $1,000,000 and/or work on 1 story (10 feet) only; $1,000,000 per occurrence, $2,000,000 aggregate with the Owner as the Named Insured.
- **.2** For projects greater than $1,000,000 and/or work over 1 story (10 feet); $2,000,000 per occurrence, $4,000,000 aggregate with the Owner as the Named Insured.

The Owner will be the Named Insured on OCP Policies. There will be no Additional Insureds on any OCP Policies.

§ 11.1.6.5 Asbestos/Lead Abatement/Pollution Liability Insurance

$2,000,000 per occurrence/$2,000,000 aggregate, including products and completed operations. Such insurance shall include coverage for the Contractor's operations including, but not limited to, removal, replacement, enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. The policy shall also include coverage for non-owned disposal site liability, Mold Remediation and Related Expenses. If a retroactive date is used, it shall pre-date the inception of the Contract

If the Contractor is using motor vehicles for transporting hazardous materials, the Contractor shall maintain pollution liability broadened coverage (ISO Endorsement CA 9948 or CA 01 12), as well as proof of MCS 90. Coverage shall fulfill all requirements of these specifications and shall extend for a period of three (3) years following acceptance by the Owner of the Certificate of Completion.

The Contractor shall cause the pollution liability coverage required herein to include the Owner and its Board of Education, officers, employees and volunteers, Construction Manager, Architect, and their consultants as additional insureds on a primary and non-contributory basis. The pollution legal liability policy shall be endorsed to waive the right of subrogation against the Owner and its Board of Education, officers, employees and volunteers.

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§ 11.1.6.6 Umbrella Liability
Minimum limits are:

.1 $5,000,000 per occurrence and $5,000,000 aggregate for general construction and no work at elevation (1 story or 10 feet) and project values less than or equal to $1,000,000;

.2 $10,000,000 each occurrence and aggregate for high-risk construction, work at elevation (>1 story or 10 feet) and project values greater than $1,000,000.

Umbrella/Excess coverage shall be on a follow-form basis or provide broader coverage over the Commercial General Liability and Auto Liability coverages. The Umbrella/Excess liability policy shall be endorsed to waive the right of subrogation against the Owner and its Board of Education, employees and volunteers.

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

§ 11.1.7 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.

§ 11.1.8 Subcontractors. The Contractor shall cause each Subcontractor to procure insurance during the life of its Subcontract or Sub-subcontract that complies with the same insurance requirements applicable to the Contractor as per this Article 11, including the naming of the Additional Insureds. 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.

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§ 11.1.9 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
The Owner shall be responsible for purchasing and maintaining 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.

§ 11.3 Property Insurance
§ 11.3.1 The Owner may, at its sole option, purchase and maintain 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, 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. The form of policy for this coverage shall be Completed Value.

§ 11.3.1.1. 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 Contractor may require for itself and its subcontractors and 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

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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.

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§ 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, (2) the Construction Manager, Construction Manager's consultants, (3) Architect, Architect's consultants, and (4) other Contractors and 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.

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§ 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 Intentionally omitted.

§ 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.

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§ 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 Performance Bond and Payment Bond

§ 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 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 percent (100%) 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 The Performance and Payment Bonds provided by the Contractor must display the Surety's Bond Number and be modified to include the following text in Section 16 of the Performance Bond and Section 18 of the Payment Bond or through a Rider attached to each Bond that is referenced in Section 16 of the Performance Bond and Section 18 of the Payment Bond:

.1 The Surety agrees that it consents to and waives notice of any addition, alteration, omission, change or other modification of the Contract Documents. Any 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.

.2 The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

.3 The Surety further agrees that in the event of any default by the Owner in the performance of the Owner's obligations to the Contract, the Contractor or Surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner, and the Owner shall have thirty (30) days from receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, First Class postage prepaid, to the Owner.

§ 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 those required by Section 11.4.1.2 of these General Conditions. 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 the attorney-in-fact to

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sign the bond. The signatures of the Contractor and Surety shall be acknowledged by a notary public.

.3 The bonds must specifically name **Eastchester 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.

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§ 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 (2) 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 9.8.1, 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. The Contractor's Performance Bond shall remain in full force and effect through this two-year comeback correction period.

§ 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 or nonconforming 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

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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.

§ 12.2.3.2 In emergencies occurring during the two-year correction period, the Owner may correct any defect immediately and charge the cost to the Contractor. The Owner shall at once notify the Contractor, who may take over the Work and make any corrections remaining after its forces arrive at the Work. Repair work not started within ten (10) days following notice to the Contractor of any defect may be considered an emergency.

§ 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.

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§ 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 affected 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, Westchester County. The Owner shall be entitled to reasonable attorney's fees and litigation expenses if it prevails in the litigation.

§ 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.

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§ 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 board members, 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.

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§ 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

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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.

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

§ 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 The Owner and the Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law and the Contract Documents. 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.

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§ 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.

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§ 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 Temporary Power
§ 13.11.1 Electricity for temporary light and power for small tools requiring not more than 10 amp. at 120 volt will be obtained from existing branch circuits. The Contractor shall furnish labor and materials for the installation of additional lamp outlets to provide a minimum of 15-foot candles and for the installation of convenience receptacles as required to supply power for small tools. All extension cords shall be removed at the end of each day and stored. The Contractor shall provide all additional temporary power required to complete the work under his Contract.

§ 13.11.2 The temporary lighting distribution shall confer with the requirements of N.E.C. and OSHA.

§ 13.12 Temporary Water
§ 13.12.1 Temporary water required for construction shall be obtained on the premises. Extend temporary hose connection to nearest suitable source of water, as directed in the field, and provided to hose bibb connections with shut-off valve at construction site.

§ 13.12.2 The Contractor will be required to guard against the waste of water and shall be responsible for all damage to all work and any part of building and its finishes.

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, under direct or indirect contract, 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.

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

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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 sufficient skilled workers or suitable materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful, and careful manner;
- **.2** fails to make prompt payment to Subcontractors or Suppliers 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, 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 Project, Milestone or construction schedules;
- **.12** refuses or fails to correct deficient Work performed by it;
- **.13** fails to keep the Project free from strikes, work stoppages, slowdowns, lockouts or other disruptive activity;
- **.14** 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;
- **.15** disregards the instructions of the Construction Manager, Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
- **.16** is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or similar laws; or
- **.17** or otherwise does not fully comply with 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 and take possession of materials stored off-site by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient 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 it may call upon the Contractor's surety at

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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 and remedies under the Contract Documents, 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.

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§ 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 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 by giving seven (7) days prior written notice to Contractor, specifying the part of the Work or subcontract to be suspended, delayed, or interrupted, and the effective date of such suspension, delay or interruption, as the case may be. Contractor shall continue to prosecute the part of or the Work not suspended, delayed, or interrupted, and shall properly protect the part of the Work so suspended, delayed or interrupted, so far as is necessary in Owner's reasonable opinion. For the Work that has not been suspended, delayed, or interrupted, the Contract Documents shall remain in full force and effect. 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

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.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 (or a part thereof) 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. If any part of the Work is so terminated, Owner shall incur no liability to Contractor by reason of such termination except as set forth in Section 14.4.3 of these General Conditions. Contractor shall be entitled to no payment for the terminated portion of the Work and waives and forfeits any claim for damages and/or lost profits. Contractor shall continue to prosecute the part of the Work not terminated. For the remainder of the Work that is not terminated, the Contract Documents shall remain in full force and effect.

§ 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.

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§ 14.4.4 The Contractor shall include in each of its subcontracts a clause, similar in effect to the provisions in Section 14.4.1 of these General Conditions, allowing the Contractor to terminate the subcontract for its sole convenience, subject only to the payment of obligations set forth in Paragraph 14.4.3 of these General Conditions.

§ 14.5 Limitation of Owner's Liability

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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

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Change Order proposal, nor notice of a potential or future claim shall constitute a Claim.

§ 15.1.2 Time Limits on Claims

§ 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.

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§ 15.1.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, as a result of a change in the work pursuant to Article 7 of the General Conditions, and the Contract Documents, 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. Failure of the Contractor to properly file a claim in accordance with the requirements of the Contract Documents shall constitute a waiver of that claim.

§ 15.1.4.1 The Owner shall not be liable to any Contractor or any subcontractor for any charges or claims for damages for any delays or hindrances, from any cause whatsoever, occurring during the progress of any portion of the Work. Such delays or hindrances shall be compensated for by an extension of time as provided in Subparagraph 15.1.6.

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§ 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;

.4 The Contractor failed to adequately review the Contract Documents and/or failed to report an error or inconsistency between or among the Contract Documents as required by the Contract Documents; or

.5 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, the Contractor shall comply with the below requirements and written notice as provided herein 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. The Contractor will exercise reasonable efforts to mitigate the potential impact of any delay.

1. Within five (5) calendar days from occurrence of same, the Contractor must apply in writing to the Owner and the Architect for an extension of time to complete its work where it has been delayed as a result of: unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including acts of God, acts of the public enemy, acts of the federal or state government in either their sovereign or contractual capacities, fires, floods, epidemics, quarantine restrictions, priority or allocation orders duly issued by the federal government; freight embargoes; changes in the work to be performed by the Contractor. The Contractor may not apply for an extension of time for delays in acquisitions of materials other than by reason of freight embargoes. All other delays of the Project, including but not limited to, the Architect's review and/ or approval of shop drawings and/ or submittals, requests for information, clarifications, samples, and change orders; the Owner's schedule; the Architect's certification of payment; payment by the Owner of the Contractor's application for payment; coordination amongst contractors; unavailability of materials and/or equipment; surveying/testing; closeout, etc. are deemed to be foreseeable and, therefore shall not form the basis for a claim for an extension of time by the Contractor.

2. All claims for additional time shall be supported by documentation which demonstrates to the Architect's and the Owner's satisfaction that the critical path of the work has been significantly altered by the delays to the activities in question, and that the schedule cannot be maintained by re-ordering other activities within the Project at no cost. 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, the Contractor, and the Architect. Where 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; only the actual period of delay as determined by the Owner or its Architect may be allowed.

3. Notwithstanding anything to the Contractor in the Contract Documents, an extension in the Contract Time, to the extent permitted under this Section 15.1.6.1, shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution, or completion of the work; (2) hindrance or obstruction in the performance of the work; (3) loss of productivity or acceleration; or (4) other similar claims (collective referred to herein as "delay(s)"), unless a delay is caused by the Owner's active interference with the Contractor's performance of the work, and only to the extent such acts continue after the Contractor furnishes the Owner with three (3) days' written notice of such

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interference. 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, 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 active interference with the Contractor's performance of the work.

§ 15.1.6.1.4 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.

§ 15.1.6.1.5 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.

§ 15.1.6.1.6 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 of these General Conditions.

§ 15.1.6.1.7 The Owner shall not be liable to the Contractor or any of its Subcontractor or suppliers for claims, impact costs, extended general conditions, unabsorbed overhead, 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/her 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 against the Owner, the Architect and the Construction Manager for consequential damages of any kind and nature arising out of or relating to this Contract. This waiver includes, without limitation, damages incurred by the Contractor for principal office expenses including compensation for personnel stationed there, unabsorbed overhead, for losses of financing, business and reputation, and loss of profit and anticipated profit including from other projects. This 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

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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 litigation of any Claim. 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.

§ 15.2.1.1 In the event of any dispute arising as to possible or alleged interference between the various contractors or of any dispute between contractors concerning the responsibility of work required for the project, which may hinder the progress of the work, the dispute shall be referred to the Architect. His decision as to the parties at fault and the manner in which the matter may be adjusted shall be binding and conclusive on all parties. Any dispute between the Contractor and his Subcontractors shall be resolved by the Contractors immediately, so as not to cause delay of the work.

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

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim 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 litigation.

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§ 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 to the below provisions.

§ 16.1.2 The Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, gender, gender identity or expression or national origin. The Contractor shall take affirmative action to ensure that all applicants are employed, and that employees are treated

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during employment without regard to their race, religion, color, sex, 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, gender, gender identity or expression 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 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.

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§ 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.

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§ 16.2 Waiver of Immunity
§ 16.2.Omitted

§ 16.3 Omitted

§ 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 form any and all liability and obligations growing out of such contract to such con- tractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sub- let 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.

§ 16.6 Each and every provision required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and in the event any such provision is not inserted or is not correctly inserted then, upon the application of either party, this Contract shall forthwith be physically amended to make such insertion or correction.

§ 16.7 If in the construction of the work covered by the Contract, a harmful dust hazard be created for which appliances or method for the elimination of harmful dust hazards have been approved by the Board of Standards and Appeals, such appliances or methods shall be installed and maintained and effectively operated by each Contractor at his sole cost and expense.

ARTICLE 17 NEW YORK STATE LABOR LAW REQUIREMENTS
§ 17.1 Working Hours
§ 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

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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

§ 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 (ed to identify and implement any applicable changes to Prevailing Wage Rates during the Project.

§ 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.

§ 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, 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 contact 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

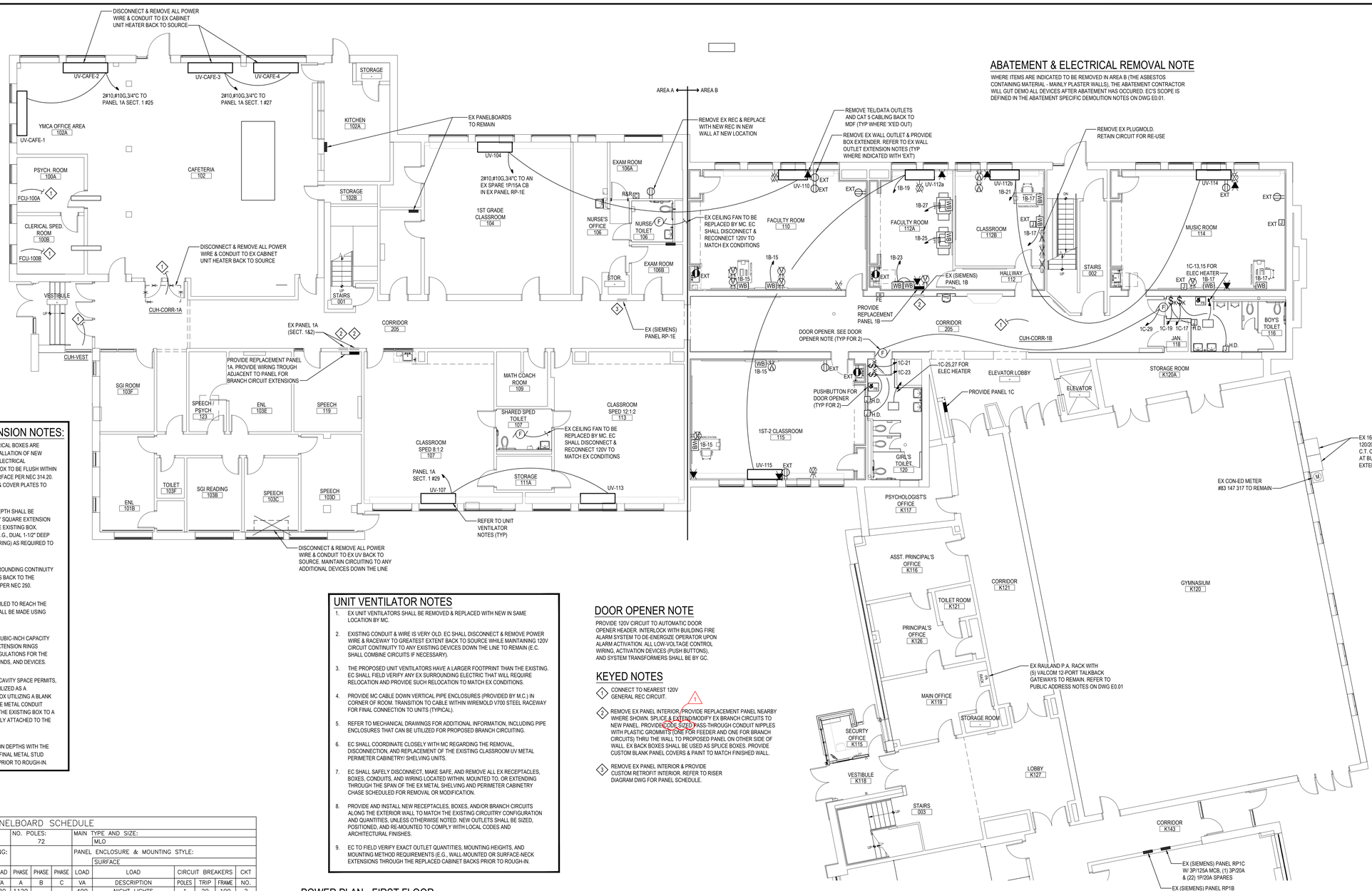
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§ 19.1 Statutory Requirements

§ 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.

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ABATEMENT & ELECTRICAL REMOVAL NOTE

WHERE ITEMS ARE INDICATED TO BE REMOVED IN AREA B (THE ASBESTOS CONTAINING MATERIAL - MAINLY PLASTER WALLS), THE ABATEMENT CONTRACTOR WILL GUT DEMO ALL DEVICES AFTER ABATEMENT HAS OCCURED. EC'S SCOPE IS DEFINED IN THE ABATEMENT SPECIFIC DEMOLITION NOTES ON DWG E0.01.

EX WALL OUTLET EXTENSION NOTES:

1. WHERE EXISTING MASONRY-SET ELECTRICAL BOXES ARE RENDERED RECESSED DUE TO THE INSTALLATION OF NEW FURRED-OUT METAL STUD WALLS, THE ELECTRICAL CONTRACTOR (EC) SHALL EXTEND THE BOX TO BE FLUSH WITHIN 1/4" OF THE NEW FINISHED DRYWALL SURFACE PER NEC 314.20. EC SHALL ALSO PROVIDE NEW DEVICES & COVER PLATES TO MATCH BUILDING STANDARD.
2. BOX EXTENSIONS APPROACHING 4" IN DEPTH SHALL BE ACHIEVED USING UL-LISTED, METALLIC 4" SQUARE EXTENSION RINGS MECHANICALLY FASTENED TO THE EXISTING BOX. EXTENSION RINGS SHALL BE STACKED (E.G., DUAL 1-1/2" DEEP RINGS WITH AN APPROPRIATE PLASTER RING) AS REQUIRED TO MATCH THE FINAL WALL DEPTH.
3. EC SHALL MAINTAIN STRICT METALLIC GROUNDING CONTINUITY ACROSS ALL STACKED EXTENSION RINGS BACK TO THE ORIGINAL BRANCH GROUNDING SYSTEM PER NEC 250.
4. EXISTING CONDUCTORS SHALL BE PIGTAILED TO REACH THE NEW DEVICE LOCATION. ALL SPLICES SHALL BE MADE USING LISTED WIRE CONNECTORS.
5. EC SHALL VERIFY THAT THE COMBINED CUBIC-INCH CAPACITY OF THE ORIGINAL BOX PLUS STACKED EXTENSION RINGS COMPLIES WITH NEC 314.16 BOX-FILL REGULATIONS FOR THE TOTAL NUMBER OF CONDUCTORS, GROUNDS, AND DEVICES.
6. AT THE EC'S OPTION, AND WHERE WALL CAVITY SPACE PERMITS, THE EXISTING MASONRY BOX MAY BE UTILIZED AS A PERMANENTLY ACCESSIBLE JUNCTION BOX UTILIZING A BLANK COVER PLATE. EC MAY ROUTE A FLEXIBLE METAL CONDUIT (FMC) OR METAL-CLAD (MC) WHIP FROM THE EXISTING BOX TO A NEW, INDEPENDENT METAL BOX SECURELY ATTACHED TO THE NEW METAL STUD FRAMING.
7. EC SHALL COORDINATE EXACT EXTENSION DEPTHS WITH THE GENERAL CONTRACTOR (GC) BASED ON FINAL METAL STUD DIMENSIONS AND DRYWALL THICKNESS PRIOR TO ROUGH-IN.

UNIT VENTILATOR NOTES

1. EX UNIT VENTILATORS SHALL BE REMOVED & REPLACED WITH NEW IN SAME LOCATION BY MC.
2. EXISTING CONDUIT & WIRE IS VERY OLD. EC SHALL DISCONNECT & REMOVE POWER WIRE & RACEWAY TO GREATEST EXTENT BACK TO SOURCE WHILE MAINTAINING 120V CIRCUIT CONTINUITY TO ANY EXISTING DEVICES DOWN THE LINE TO REMAIN (E.C. SHALL COMBINE CIRCUITS IF NECESSARY).
3. THE PROPOSED UNIT VENTILATORS HAVE A LARGER FOOTPRINT THAN THE EXISTING. EC SHALL FIELD VERIFY ANY EX SURROUNDING ELECTRIC THAT WILL REQUIRE RELOCATION AND PROVIDE SUCH RELOCATION TO MATCH EX CONDITIONS.
4. PROVIDE MC CABLE DOWN VERTICAL PIPE ENCLOSURES (PROVIDED BY M.C.) IN CORNER OF ROOM. TRANSITION TO CABLE WITHIN WIREMOLD V700 STEEL RACEWAY FOR FINAL CONNECTION TO UNITS (TYPICAL).
5. REFER TO MECHANICAL DRAWINGS FOR ADDITIONAL INFORMATION, INCLUDING PIPE ENCLOSURES THAT CAN BE UTILIZED FOR PROPOSED BRANCH CIRCUITING.
6. EC SHALL COORDINATE CLOSELY WITH MC REGARDING THE REMOVAL, DISCONNECTION, AND REPLACEMENT OF THE EXISTING CLASSROOM UV METAL PERIMETER CABINETRY/ SHELVING UNITS.
7. EC SHALL SAFELY DISCONNECT, MAKE SAFE, AND REMOVE ALL EX RECEPTACLES, BOXES, CONDUITS, AND WIRING LOCATED WITHIN, MOUNTED TO, OR EXTENDING THROUGH THE SPAN OF THE EX METAL SHELVING AND PERIMETER CABINETRY CHASE SCHEDULED FOR REMOVAL OR MODIFICATION.
8. PROVIDE AND INSTALL NEW RECEPTACLES, BOXES, AND/OR BRANCH CIRCUITS ALONG THE EXTERIOR WALL TO MATCH THE EXISTING CIRCUITRY CONFIGURATION AND QUANTITIES, UNLESS OTHERWISE NOTED. NEW OUTLETS SHALL BE SIZED, POSITIONED, AND RE-MOUNTED TO COMPLY WITH LOCAL CODES AND ARCHITECTURAL FINISHES.
9. EC TO FIELD VERIFY EXACT OUTLET QUANTITIES, MOUNTING HEIGHTS, AND MOUNTING METHOD REQUIREMENTS (E.G., WALL-MOUNTED OR SURFACE-NECK EXTENSIONS THROUGH THE REPLACED CABINET BACKS PRIOR TO ROUGH-IN.

DOOR OPENER NOTE

PROVIDE 120V CIRCUIT TO AUTOMATIC DOOR OPENER HEADER. INTERLOCK WITH BUILDING FIRE ALARM SYSTEM TO DE-ENERGIZE OPERATOR UPON ALARM ACTIVATION. ALL LOW-VOLTAGE CONTROL WIRING, ACTIVATION DEVICES (PUSH BUTTONS), AND SYSTEM TRANSFORMERS SHALL BE BY GC.

KEYED NOTES

1. CONNECT TO NEAREST 120V GENERAL REC CIRCUIT.
2. REMOVE EX PANEL INTERIOR. PROVIDE REPLACEMENT PANEL NEARBY WHERE SHOWN. SPLICE & EXTEND/MODIFY EX BRANCH CIRCUITS TO NEW PANEL. PROVIDE CODE SIZED PASS-THROUGH CONDUIT NIPPLES WITH PLASTIC GROMMETS FOR FEEDER AND ONE FOR BRANCH CIRCUITS) THRU THE WALL TO PROPOSED PANEL ON OTHER SIDE OF WALL. EX BACK BOXES SHALL BE USED AS SPLICE BOXES. PROVIDE CUSTOM BLANK PANEL COVERS & PAINT TO MATCH FINISHED WALL.
3. REMOVE EX PANEL INTERIOR & PROVIDE CUSTOM RETROFIT INTERIOR. REFER TO RISER DIAGRAM DWG FOR PANEL SCHEDULE.

PANELBOARD SCHEDULE

PANEL NAME: 1A | POWER SUPPLY: 120/208V,3Ø,4W,GND | NO. POLES: 72 | MAIN TYPE AND SIZE: MLO
MAIN BUS SIZE: 225A | PANEL SHORT CIRCUIT RATING: 22 KAIC | PANEL ENCLOSURE & MOUNTING STYLE: SURFACE

CKT	CIRCUIT BREAKERS			LOAD	LOAD	PHASE	PHASE	PHASE	LOAD	LOAD	CIRCUIT BREAKERS			CKT
NO.	FRAME	TRIP	POLES	DESCRIPTION	VA	A	B	C	VA	DESCRIPTION	POLES	TRIP	FRAME	NO.
1	100	20	1	POLE LIGHTING	720	1120			400	NIGHT LIGHTS	1	20	100	2
3	100	20	1	CAFE LIGHTING	720		1440		720	CAFE LIGHTING	1	20	100	4
5	100	20	1	SCI & MUSIC CEILING	720			1440	720	SCI & MUSIC CEILING	1	20	100	6
7	100	20	1	KINDERGARTEN CEILING	720	1440			720	KINDERGARTEN CEILING	1	20	100	8
9	100	20	1	KINDERGARTEN CEILING	720		1440		720	KINDERGARTEN CEILING	1	20	100	10
11	100	20	1	SPARE	0			720	720	ROOM 101 CEILING	1	20	100	12
13	100	20	1	ROOM 103 CEILING	720	1440			720	ROOM 103 CEILING	1	20	100	14
15	100	20	1	PRINCIPAL REC	720		1440		720	GEN OFFICE CEILING	1	20	100	16
17	100	20	1	CORRIDOR LIGHTS	720			1440	720	CORRIDOR LIGHTS	1	20	100	18
19	100	20	1	FIELD EQUIP STOR LTS	720	1140			420	LOBBY LIGHTS	1	20	100	20
21	100	20	1	KITCHEN CEILING	720		1440		720	BOOK, SCI & MUSIC LTS	1	20	100	22
23	100	15	1	U.V.'S SCI	600			1200	600	U.V.'S RMS 103 & 104	1	20	100	24
25	100	15	1	CAFE U.V.'S	1081	1106			25	EXIT SIGNS	1	20	100	26
27	100	15	1	CAFE U.V.'S	1081		1414		333	IMMERSION HEATER	3	15	100	28
29	100	15	1	CR 107 & 113 U.V.'S	1035			1368	333	–	–	15	100	30
31	100	15	2	ERV–1	507	840			333	–	–	15	100	32
33	100	15	–	–	507		557		50	CLOCK SYSTEM	1	20	100	34
35	100	20	1	TEACHER'S RM LTS	600			1140	540	WAITING & NURSE RMS	1	20	100	36
37	100	20	1	REFRIGERATOR	600	1140			540	HEAD & PLUGS	1	20	100	38
39	100	20	1	TUNNEL	360		1080		720	TEACHER'S RM REC	1	20	100	40
41	100	20	1	CAFE VAC REC	180			1180	1000	LOBBY U.V.	1	20	100	42
43	100	20	1	WAITING & CAFE REC	360			1080	720	KINDERG.,101,103 REC	1	20	100	44
45	100	20	1	KINDERG,PRINC,TOIL REC	360	900			540	E.CAFE & CORR VAC REC	1	20	100	46
47	100	20	1	OFFICE & KINDERG REC	360		540		180	EYE CHART REC	1	20	100	48
49	100	20	1	DENTAL REC	360			540	180	STEAM TABLE REC	1	20	100	50
51	100	20	1	HEALING ELMNT (DENTAL)	1000			1200	200	HEALING ELMNT (DENTAL)	1	20	100	52
53	100	20	1	DENTAL REC	360	540			180	EX LOAD	1	20	100	54
55	100	20	2	ELEC HEAT	750		930		180	EX LOAD	1	20	100	56
57	100	20	–	–	750			930	180	EX LOAD	1	20	100	58
59	100	15	1	EM LTS	50			470	420	ROOF FAN #2	3	15	100	60
61	100	20	1	SPARE	0	420			420	–	–	15	100	62
63	100	20	1	SPARE	0		420		420	–	–	15	100	64
65	100	20	1	SPARE	0			0	0	SPARE	1	20	100	66
67	–	–	–	BUSSED SPACE	0	0			0	SPARE	1	20	100	68
69	–	–	–	BUSSED SPACE	0		0		0	SPARE	1	20	100	70
71	–	–	–	BUSSED SPACE	0			0	0	SPARE	1	20	100	72
TOTAL LOAD PER PHASE:						10086	10701	12708	COMMENTS: - CONFIRM ALL CIRCUITS THAT ARE NOT IN USE AND PROVIDE ACCURATE TYPED DIRECTORY TO MATCH CONDITIONS. - IT IS SUGGESTED TO USE A BLANK TOP ENDWALL SINCE MOST CIRCUITS ARE ENTERING THE BACK OF THE PANEL.					
TOTAL CONNECTED LOAD:							33495							
TOTAL CALCULATED LOAD:								93						
TOTAL LOAD AMPS:														

PANELBOARD SCHEDULE

PANEL NAME: 1B | POWER SUPPLY: 120/208V,3Ø,4W,GND | NO. POLES: 42 | MAIN TYPE AND SIZE: MLO
MAIN BUS SIZE: 225A | PANEL SHORT CIRCUIT RATING: 22 KAIC | PANEL ENCLOSURE & MOUNTING STYLE: SURFACE

CKT	CIRCUIT BREAKERS			LOAD	LOAD	PHASE	PHASE	PHASE	LOAD	LOAD	CIRCUIT BREAKERS			CKT
NO.	FRAME	TRIP	POLES	DESCRIPTION	VA	A	B	C	VA	DESCRIPTION	POLES	TRIP	FRAME	NO.
1	100	20	1	RM 105 LTG	1000	1540			540	CORR VC, REC	1	20	100	2
3	100	20	1	GIRL'S TOIL&REAR LIGHT	600		1600		1000	LIGHTING	1	20	100	4
5	100	20	1	RM 106 LTG	1000			1400	400	LTG BOY'S TOIL & J.C.	1	20	100	6
7	100	20	1	RM 108 LTG	1000	1050			50	EM LIGHTS	1	20	100	8
9	100	20	1	DISPLAY CABINET	200		740		540	RM #4 REC	1	20	100	10
11	100	20	1	RM 104 GFI	180			720	540	RM#1 REC	1	20	100	12
13	100	20	1	RM 106	540	590			50	EM LIGHTS	1	20	100	14
15	100	20	1	RM 110,115 DESK/DISPL	886		886		0	SPARE	1	20	100	16
17	100	20	1	RM 112,114 DESK/DISPL	1080			1080	0	SPARE	1	20	100	18
19	100	15	1	RM 112A,115 UV'S	1128	1128			0	SPARE	1	20	100	20
21	100	15	1	RM 112B,114 UV'S	886		886		0	SPARE	1	20	100	22
23	100	20	1	RM 112 CPU RECEPS	360			360	0	SPARE	1	20	100	24
25	100	20	1	RM 112 COPIER	1000	1000			0	BUSSED SPACE	–	–	–	26
27	100	20	1	RM 112 COPIER	1000		1000		0	BUSSED SPACE	–	–	–	28
29	100	20	1	SPARE	0			0	0	BUSSED SPACE	–	–	–	30
31	100	20	1	SPARE	0			0	0	BUSSED SPACE	–	–	–	32
33	100	20	1	SPARE	0	0			0	BUSSED SPACE	–	–	–	34
35	100	20	1	SPARE	0		0		0	BUSSED SPACE	–	–	–	36
37	100	20	1	SPARE	0			0	0	BUSSED SPACE	–	–	–	38
39	100	20	1	SPARE	0			0	0	BUSSED SPACE	–	–	–	40
41	100	20	1	SPARE	0	0			0	BUSSED SPACE	–	–	–	42
TOTAL LOAD PER PHASE:						5308	5112	3560	COMMENTS: - CONFIRM ALL CIRCUITS THAT ARE NOT IN USE AND PROVIDE ACCURATE TYPED DIRECTORY TO MATCH CONDITIONS. - IT IS SUGGESTED TO USE A BLANK TOP ENDWALL SINCE MOST CIRCUITS ARE ENTERING THE BACK OF THE PANEL.					
TOTAL CONNECTED LOAD:							13980							
TOTAL CALCULATED LOAD:								39						
TOTAL LOAD AMPS:														

PANELBOARD SCHEDULE

PANEL NAME: 1C | POWER SUPPLY: 120/208V,3Ø,4W,GND | NO. POLES: 42 | MAIN TYPE AND SIZE: MLO
MAIN BUS SIZE: 225A | PANEL SHORT CIRCUIT RATING: 22 KAIC | PANEL ENCLOSURE & MOUNTING STYLE: RECESSED

CKT	CIRCUIT BREAKERS			LOAD	LOAD	PHASE	PHASE	PHASE	LOAD	LOAD	CIRCUIT BREAKERS			CKT
NO.	FRAME	TRIP	POLES	DESCRIPTION	VA	A	B	C	VA	DESCRIPTION	POLES	TRIP	FRAME	NO.
1	100	20	1	SPARE	0	0			0	SPARE	1	20	100	2
3	100	20	1	SPARE	0		0		0	SPARE	1	20	100	4
5	100	20	1	SPARE	0			0	0	SPARE	1	20	100	6
7	100	20	1	SPARE	0	0			0	SPARE	1	20	100	8
9	100	20	1	SPARE	0		0		0	SPARE	1	20	100	10
11	100	20	1	SPARE	0			0	0	SPARE	1	20	100	12
13	100	15	2	BOY'S TOILET 120 HTR	1000	1000			0	SPARE	1	20	100	14
15	100	15	–	–	1000		1000		0	SPARE	1	20	100	16
17	100	20	1	BOY'S TOILET 116 H.D.	1200			1200	0	SPARE	1	20	100	18
19	100	20	1	BOY'S TOILET 116 H.D.	1000	1000			0	BUSSED SPACE	–	–	–	20
21	100	20	1	GIRL'S TOILET 120 H.D.	1200		1200		0	BUSSED SPACE	–	–	–	22
23	100	20	1	GIRL'S TOILET 120 H.D.	1200			1200	0	BUSSED SPACE	–	–	–	24
25	100	15	2	GIRL'S TOILET 120 HTR	1000	1000			0	BUSSED SPACE	–	–	–	26
27	100	15	–	–	1000		1000		0	BUSSED SPACE	–	–	–	28
29	100	20	1	DOOR OPENERS	500			500	0	BUSSED SPACE	–	–	–	30
31	100	20	1	SPARE	0			0	0	BUSSED SPACE	–	–	–	32
33	100	20	1	SPARE	0	0			0	BUSSED SPACE	–	–	–	34
35	100	20	1	SPARE	0		0		0	BUSSED SPACE	–	–	–	36
37	100	20	1	SPARE	0			0	0	BUSSED SPACE	–	–	–	38
39	100	20	1	SPARE	0			0	0	BUSSED SPACE	–	–	–	40
41	100	20	1	SPARE	0	0			0	BUSSED SPACE	–	–	–	42
TOTAL LOAD PER PHASE:						3000	3200	2900	COMMENTS:					
TOTAL CONNECTED LOAD:							9100							
TOTAL CALCULATED LOAD:														
TOTAL LOAD AMPS:							25							

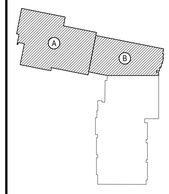
POWER PLAN - FIRST FLOOR

SCALE: 1/8" = 1'-0"

REV.	DATE	ITEM
01	10/07/26	ADD. NO. 01

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KEY PLAN

NOT TO SCALE

EASTCHESTER UNION FREE SCHOOL DISTRICT
PHASE 5a - 2022 CAPITAL BOND IMPROVEMENTS
WAVERLY SCHOOL
EASTCHESTER / WESTCHESTER COUNTY

PROJECT MDA AG

DWG TITLE POWER PLAN - FIRST FLOOR

DRAWING BY:

CHECK BY:

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SED No. 66-03-01-03-0-002-012

DISTRICT EASTCHESTER UNION FREE SCHOOL DISTRICT

PROJECT PHASE 5a - 2022 CAPITAL BOND IMPROVEMENTS

DWG TITLE POWER PLAN - FIRST FLOOR

SCALE: AS NOTED
DATE: JUNE 2026
BID PICK-UP: OCTOBER 5, 2026
FILE No: 25-139A WVS

E1.02

SIEMENS I-T-E PANEL RETROFIT NOTES

1. REMOVE & REPLACE PANEL INTERIOR WITH AN OFFICIALLY LISTED SIEMENS FACTORY RETROFIT. PROVIDE MANUFACTURER WITH ALL REQUIRED FIELD-MEASUREMENTS OF THE ENCLOSURES AND MOUNTING POSTS TO GUARANTEE A CERTIFIED UL 67 FIT WITHOUT MODIFICATIONS. NO THIRD-PARTY FIELD INSPECTIONS OR CUSTOM MODIFICATIONS ARE PERMITTED.
2. RETROFIT ASSEMBLY MUST MOUNT SECURELY TO THE ORIGINAL CABINET MOUNTING STUDS OR INCLUDED ADAPTER BRACKETS. DO NOT DRILL, CUT, COPE, OR WELD THE EXISTING STEEL BACKBOX WALLS.
3. THE COMPLETED ASSEMBLY AND ALL NEW BRANCH BREAKERS SHALL BE INDIVIDUALLY FULLY RATED FOR THE KAIC RATINGS INDICATED ON THE SCHEDULES. SERIES-RATING IS NOT PERMITTED.
4. RE-WORK OR EVALUATION EXPENSES STEMMING FROM NON-COMPLIANT PARTS SHALL BE THE SOLE RESPONSIBILITY OF THE EC.
5. EXISTING CLOTH BRANCH CIRCUITS MAY BE BRITTLE. PRACTICE EXTREME CARE WHEN SPLICING CIRCUITS. MINIMIZE SPLICE LOOPS WITHIN THE EXISTING BACK BOXES TO ENSURE ADHERENCE TO NEC ARTICLE 314. PROVIDE INSULATION (MEGGER) TESTING FOR ALL CONDUCTORS BEFORE RE-ENERGIZATION.
6. GC SHALL REPAIR, PATCH, AND PAINT THE DISTURBED BLOCK WALL TO FLAWLESSLY MATCH EXISTING SURROUNDING CONDITIONS, FINISHES, AND FIRE-RESISTANCE RATINGS.
7. EXIST BRANCH CIRCUITS UTILIZE BRITTLE REINFORCED CLOTH/RUBBER INSULATION. EC SHALL MINIMIZE BENDING, MOVING, OR PULLING OF THESE CONDUCTORS TO PREVENT INSULATION FLAKING OR CRACKING.
8. EC SHALL INSPECT ALL EXIST CLOTH CIRCUITS REMAINING IN SERVICE. CONCENTRICALLY RE-INSULATE ANY WIRE SHOWING DEGRADATION, FRAYING, OR CRACKS WITH UL-LISTED, HEAVY-WALL, FLAME-RETARDANT HEAT-SHRINK TUBING FROM PANEL ENTRY TO BREAKER TERMINATION.
9. RE-IDENTIFY ALL RE-INSULATED CONDUCTORS WITH COLOR-CODED PHASING TAPE AT TERMINATIONS.
10. IF EXIST CONDUCTORS ARE UNUSABLE DUE TO EXCESSIVE BRITTLENESS OR INSUFFICIENT LENGTH, EC SHALL SPLICED-EXTEND AFFECTED CONDUCTORS WITHIN THE EXISTING RECESSED TUB USING UL-LISTED WIRE NUTS OR BARREL SLEEVES TO REACH THE NEW BREAKERS, MAINTAINING ALL NEC BENDING SPACE AND BOX FILL LIMITS.
11. THIS DESIGN ASSUMES CONFORMANCE AND INTEGRITY OF DOWNSTREAM CIRCUITS. EC REMAINS SOLELY LIABLE FOR FIELD TESTING, INTEGRITY VERIFICATION, AND REMEDIATION OF DOWNSTREAM SHORT-CIRCUITS OR INSULATION FAILURES OUTSIDE THE RECESSED PANEL ENCLOSURE.

OMDP BREAKER INSTALLATION NOTES

1. EXISTING OMDP IS A SIEMENS FC1 (SERIES 6) TWIN-MOUNT CHASSIS. NEW 3P/125A & 3P/100A CB'S SHALL BE MOUNTED SIDE-BY-SIDE IN HORIZONTAL ROWS IN ACCORDANCE WITH CHASSIS FRAME ALIGNMENT COUPLING RULES.
2. BREAKERS REQUIRE PROPRIETARY SIEMENS SE6 TWIN-MOUNTING COPPER STRAP KITS FOR ED-FRAME BREAKERS (ED4/ED6/MED4). EC SHALL PROVIDE ANY BUS EXTENSIONS REQUIRED. DO NOT REUSE EXISTING 60A MOUNTING HARDWARE, UNLESS EXPLICITLY COMPATIBLE.
3. CONTRACTOR TO PROVIDE AND INSTALL MATCHING SIEMENS BRANCH COVER TRIM PANELS OR DEADFRONT FILLER PLATES TO ENSURE A COMPLETE, COMPLIANT, FINGER-SAFE SEAL (PER NEC 110.27) AROUND ALL NEW CB'S, WITH NO EXPOSED INTERIOR GAPS.
4. PROVIDE KNOCKOUT PLUGS FOR ANY OPENINGS CREATED FROM FEEDER REMOVALS.

CONDUIT & ROUTING NOTES

1. EC SHALL PROVIDE COMPLETELY NEW EMT CONDUIT PATHWAYS RUN THROUGH EXISTING CORRIDOR DROP CEILINGS FOR NEW SUB-PANEL FEEDERS. SAFE OFF AND BYPASS AND ABANDON ALL EXISTING ANTIQUATED CONDUITS & FEEDERS.
2. ALL CEILING CONDUITS RUNNING IN MULTIPLE PARALLEL FEEDS SHALL BE BATCHED AND NEATLY SECURED ON FIELD-FABRICATED KINDORF / UNISTRUT TRAPEZE RACK HANGERS. SUPPORT SPACING AND RACK THREADED-ROD ANCHORING TO STRUCTURAL CEILING SLABS SHALL COMPLY FULLY WITH NEC 358.30
3. ALL INDIVIDUAL OR BATCHED RACK RUNS PENETRATING THROUGH INTERNAL SCHOOL WALL FIRE BARRIERS SHALL BE PERMANENTLY SEALED BY THE EC. PROVIDE ALL APPLICABLE UL-LISTED APPROVED FIRESTOP ASSEMBLY SYSTEMS.

LOAD LETTER NOTE

A ConED LOAD LETTER HAS BEEN FILED.
ConED PROJECT: #9031341
ConED PLANNER: MIKE SAPUTO
PHONE: 1-(646)-941-0441
E-MAIL: SAPUTOM@ConED.COM

ELECTRIC SERVICE NOTE

EXISTING NYPA ELECTRIC BILLS INDICATE A PEAK ELECTRICAL DEMAND OF 195.6 KVA FOR THE MONTH OF JUNE 2025.

THE PROPOSED ADDITIONAL HVAC EQUIPMENT LOAD IS APPROXIMATLEY 209 KVA.

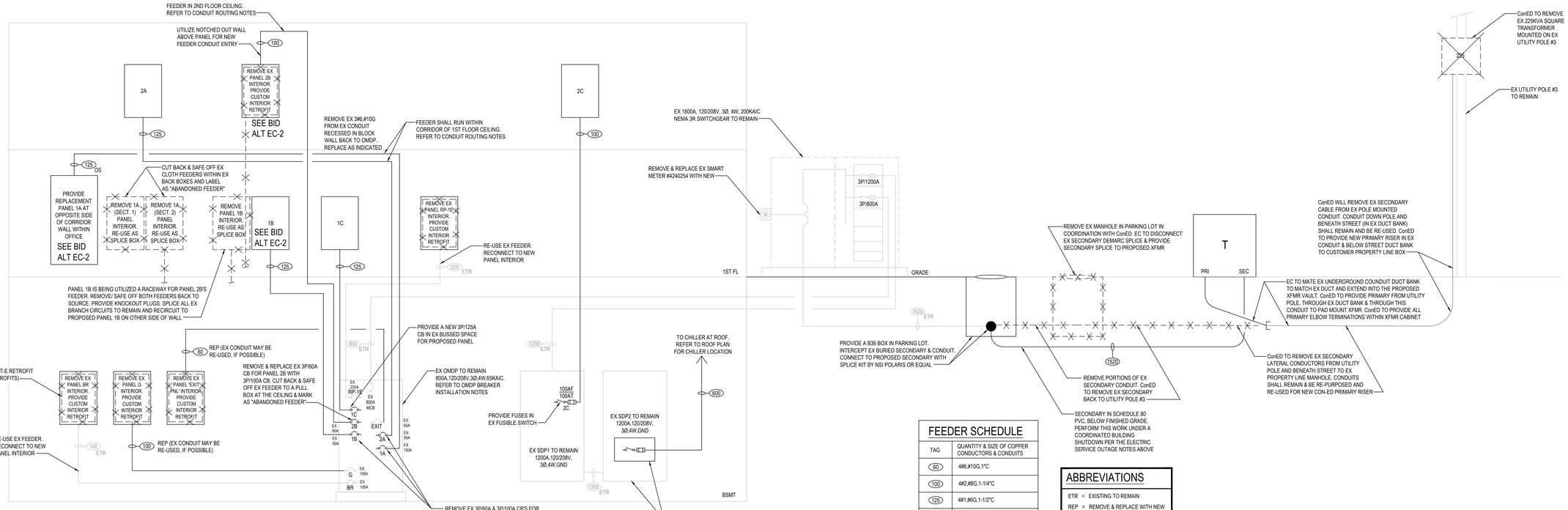
THE TOTAL 404.8 KVA @ 3Ø/208V EQUATES TO APPROXIMATELY 1124A. THE EXISTING 1600A, 208V ELECTRIC SERVICE IS ADEQUATE TO SUPPORT THE PROPOSED ADDITIONAL LOAD. THE ELECTRIC SERVICE WORK IS PROPOSED FOR UPGRADING THE ConED TRANSFORMER & PRIMARY.

ELECTRIC SERVICE OUTAGE NOTES:

1. IT IS EXPECTED THAT THE PROPOSED SERVICE UPGRADE WILL REQUIRE ONE OR MORE BUILDING OUTAGES. SUCH OUTAGES SHALL ONLY OCCUR WHEN THE BUILDING IS NOT IN OPERATION, AND WITH THE APPROVAL OF THE OWNER. THIS MAY INCLUDE EVENINGS, OVERNIGHTS, WEEKENDS AND/OR HOLIDAYS. INCLUDE ALL RESULTANT PREMIUM TIME CHARGES IN BID.
2. EC TO COORDINATE ALL OUTAGES IN ADVANCE WITH THE OWNER AND UTILITY.
3. WHERE BUILDING OUTAGES ARE TO EXCEED 24HRS IN DURATION, EC TO PROVIDE TEMPORARY GENERATOR(S) AND ALL RELATED LABOR AND MATERIAL TO SUPPORT BUILDING FIRE ALARM SYSTEM OR PROVIDE FIRE WATCH. REMOVE UPON COMPLETION OF OUTAGE.

CUSTOM INTERIOR RETROFIT PANELBOARD SCHEDULE

PANEL NAME: RP-1E				POWER SUPPLY: 120/208V,3ø,4W,GND		NO. POLES: 42				MAIN TYPE AND SIZE: MLO				
MAIN BUS SIZE: 225A				PANEL SHORT CIRCUIT RATING: 22 KAIC						PANEL ENCLOSURE & MOUNTING STYLE: RECESSED				
CKT	CIRCUIT BREAKERS			LOAD	LOAD	PHASE	PHASE	PHASE	LOAD	LOAD	CIRCUIT BREAKERS			CKT
NO.	FRAME	TRIP	POLES	DESCRIPTION	VA	A	B	C	VA	DESCRIPTION	POLES	TRIP	FRAME	NO.
1	100	20	1	RECEPS						AC-4 NURSE OFFICE	3	20	100	2
3	100	20	1	RECEPS						–	–	20	100	4
5	100	20	1	RECEPS						–	–	20	100	6
7	100	20	1	RECEPS						LEAK DETECTION PANEL	1	20	100	8
9	100	20	1	RECEPS						COND PUMP (CP-1)	1	20	100	10
11	100	20	1	RECEPS						COND PUMP (CP-2)	1	20	100	12
13	100	20	1	RECEPS						AHU-1 (FOR MDF RM)	1	20	100	14
15	100	20	1	RECEPS						EXTERIOR LIGHTING	1	20	100	16
17	100	20	1	ROOF REC AT AC-3						ACCU-1 (FOR MDF RM)	2	20	100	18
19	100	20	1	SITE LIGHTING						–	–	20	100	20
21	100	20	1	SPARE						TIMECLOCK	–	20	100	22
23	100	20	1	UV-E						EX LOAD	–	20	100	24
25	100	20	1	SPARE						SURGE SUPRESSION	3	20	100	26
27	100	20	1	SPARE						–	–	20	100	28
29	100	20	1	SPARE						–	–	20	100	30
31	100	20	1	SPARE						EX LOAD	1	20	100	32
33	100	20	1	SPARE						EX LOAD	1	20	100	34
35	100	20	1	SPARE						RM113 AC	2	20	100	36
37	100	20	1	SPARE						–	–	20	100	38
39	100	20	1	SPARE						RM 111 AC	2	20	100	40
41	100	20	1	SPARE						–	–	20	100	42
TOTAL LOAD PER PHASE:										COMMENTS:				
TOTAL CONNECTED LOAD:														
TOTAL CALCULATED LOAD:														
TOTAL LOAD AMPS:														



CUSTOM RETROFIT PANEL NOTE

PROPOSED CUSTOM RETROFIT PANELS SHALL BE UL LISTED AND MANUFACTURED BY A RECOGNIZED PANELBOARD MANUFACTURER COMPLYING WITH PROJECT SPECIFICATIONS. PROVIDE CUSTOM INTERIORS, TRIMS, AND COVERS ENGINEERED TO MATCH EXISTING BACK BOX DIMENSIONS. CONTRACTOR SHALL VERIFY FIELD DIMENSIONS PRIOR TO ORDERING. VACUUM AND BRUSH OUT ALL RETROFIT PANEL BACK BOXES PRIOR TO INSTALLATION.

BID ALTERNATE EC-2 NOTE: PANEL FEEDER REPLACEMENT

UNDER BID ALTERNATE EC-2, PROVIDE A COST ADJUSTMENT TO THE BASE BID TO INSTALL NEW FEEDERS AND BRANCH CB'S WITHIN EX OMDP, INCLUDING ALL NEW CONDUIT AND WIRE, AS SHOWN ON THE RISER DIAGRAM. UNDER THIS ALTERNATE, THE EC SHALL REMOVE AND DISPOSE OF ALL EXISTING CONDUCTORS FROM THE EX CONDUITS AFTER THE NEW FEEDERS ARE ENERGIZED. PROVIDE AN INDIVIDUAL COST BREAKDOWN FOR EACH IDENTIFIED PANELBOARD. EXISTING FEEDERS SHALL BE SPLICED FROM EX PANEL BACKBOX TO PROPOSED PANEL.

FEEDER SCHEDULE

TAG	QUANTITY & SIZE OF COPPER CONDUCTORS & CONDUITS
60	4#6,#10G,1"C
100	4#2,#8G,1-1/4"C
125	4#1,#6G,1-1/2"C
125 OS	4#1/0,#4G,2"C
400	4#500MCM,#2G,4"C
600 ON	2 SETS 3#350MCM,#2/0G,3"C (NO NEUTRAL)
800	2 SETS 4#500MCM,#1/0G,4"C
1200	3 SETS 4#600MCM,#3/0G,4"C
1520	4 SETS 4#500MCM,#4/0G,4"C XHHW-2 CONDUCTORS

OS = OVERSIZED FOR VDROP
ON = OMIT NEUTRAL
OG = OMIT GROUND

ABBREVIATIONS

ETR	= EXISTING TO REMAIN
REP	= REMOVE & REPLACE WITH NEW

THIS ONLY SHOWN FOR QUICK REFERENCE. THESE ARE ALSO DEFINED ON DRAWING E0.01

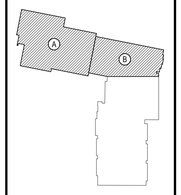
POWER RISER DIAGRAM

SCALE: NONE

REV.	DATE	ITEM
01	10/07/26	ADD. NO. 01

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KEY PLAN

NOT TO SCALE

PROJECT: EASTCHESTER UNION FREE SCHOOL DISTRICT
PHASE 5a - 2022 CAPITAL BOND IMPROVEMENTS
WAVERLY SCHOOL
EASTCHESTER / WESTCHESTER COUNTY

DWG TITLE: POWER RISER DIAGRAM

DRAWING BY: MDA
CHECK BY: AG

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SED No.	66-03-01-03-0-002-012
DISTRICT	EASTCHESTER UNION FREE SCHOOL DISTRICT
PROJECT	PHASE 5a - 2022 CAPITAL BOND IMPROVEMENTS
DWG TITLE	POWER RISER DIAGRAM
SCALE:	AS NOTED
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E7.02