

## INVITATION TO BID

### PROJECT INFORMATION

- A. Notice to Bidders: Qualified bidders are invited to submit bids for Project as described in this Document according to the Instructions to Bidders.
- B. Project Identification: Cazenovia Central School District – Freezer/Cooler Replacement
- Project Location: 37 Burton St, Cazenovia NY 13035
- C. Owner: Cazenovia Central School District.
- Owner's Representative:  
Eric Benedict  
31 Emory Ave, Cazenovia NY 13035  
[Ebenedict@caz.cnyric.org](mailto:Ebenedict@caz.cnyric.org)  
(315) 655-5354
- D. Project Description: Project consists of the replacement of the freezer and its mechanicals, and the replacement of the evaporator, condenser, and line set of the cooler.
- E. Construction Contract: Bids will be received for the following Work:
- General Contract.

### BID SUBMITTAL AND OPENING

- F. The owner will receive sealed bids until the bid time and date at the location indicated below. Owner will consider bids prepared in compliance with the Instructions to Bidders issued by Owner, and delivered as follows:
- Bid Date: June 12th, 2024.
  - Bid Time: **10:00 a.m.**, local time.
  - Location: Business Office Conference room, District Offices Cazenovia Central School District, 31 Emory St, Cazenovia, NY, 13035.
- G. Due to increased building security and limited access to buildings, all vendors are advised to allow ample time for all hand-delivered bids to be received prior to their designated bid opening time. Bids will be read out loud at 10am.
- Bids submitted by mail or by courier service should be sent to Cazenovia Central School District, 31 Emory St, Cazenovia, NY 13035, Attention Eric Benedict.

### C. PREBID CONFERENCE

A Prebid walk through for all bidders will be held at 37 Burton St, Cazenovia NY 13035 on Tuesday June 5th, 2024 at 3:00 pm, local time. Prospective bidders are requested to attend.

TIME OF COMPLETION

- H. Bidders shall begin the Work on receipt of the Notice to Proceed and shall complete the Work within the Contract Time.

BIDDER'S QUALIFICATIONS

- I. Bidders must refer to ALL governing laws and regulations, including Affirmative Action Requirements – Equal Employment Opportunity, Minimum Wage Rate Requirements to be paid under Contract, Sales Tax Exemption, and Safety and Health Programs required by Federal Law(s). The Board of Education reserves the right to waive irregularities and reject all bids.

Board of Education  
Cazenovia Central School District  
Cazenovia, NY, 13035

END OF DOCUMENT

## CONTRACT #100 – Freezer/Cooler work

FOR: Freezer/Cooler Replacement at Cazenovia Central School District

The bids are due on Wednesday, June 12, 2024, at 10:00 a.m. at the District Administration Offices.

THE OWNER RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS. THE BID FORM MUST BE COMPLETED IN FULL

TO: Cazenovia Central School District  
31 Emory Ave  
Cazenovia, NY 13035

FROM: \_\_\_\_\_ (Contractor)  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_ (City/State)

Federal Employer's Identification Number: \_\_\_\_\_

The undersigned certifies that he has examined and fully comprehends the requirements. That pursuant to and in compliance with your "Advertisement for Bids" offers to furnish all plant, labor, materials, supplies, equipment, and other facilities and things necessary and proper for or incidental to the named project as required and in strict accordance with the applicable provisions.

a) Walk through will be held on June 5, 2024, at 3:00 pm

BASE BID - for the sum of: \_\_\_\_\_ (Dollars)

BIDDER'S CERTIFICATION

TO: (Owner's Name) \_\_\_\_\_  
(Address) \_\_\_\_\_

Gentlemen:

We certify to having read all the Bidding Documents and offer to perform,

\_\_\_\_\_  
(work to be performed)

for the Owner in exact accordance with the Terms and Conditions therein and at the prices stated  
in our Bid. Our offer to perform the \_\_\_\_\_ may be  
(work to be performed)

accepted by the Owner by giving Notice of Award pursuant to the Bidding Documents. We

Further certify that the stated entity of \_\_\_\_\_ (bidder  
or agent acting on the Bidder's behalf) is of lawful age and possesses the general capacity to  
enter a Contract.

Respectfully submitted by,

\_\_\_\_\_  
(Name of Company)

By \_\_\_\_\_

(Signature & Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_

(Date) \_\_\_\_\_

CORPORATE RESOLUTION OF

---

(Name of Corporation, Company, Legal Entity)

RESOLVED, that it is desirable and in the best interest of this Corporation, Company, Legal Entity that it determine and submit a Bid to Contract with the Owner; that \_\_\_\_\_ (Name and Title) hereby is authorized to perform work on behalf of this Corporation, Company, Legal Entity any and all such acts as he or she may deem necessary or advisable in order to obtain said Contract, and in connection therewith to execute and file all requisite papers and documents, including, but not limited to, applications, reports, surety bonds, irrevocable consents and appointments of attorneys; and the execution by such officers of any such paper or document or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefore from this Corporation, Company, Legal Entity and the approval and ratification by this Corporation, Company, Legal Entity of the papers and documents so executed and the action so taken.

CERTIFICATE

The undersigned hereby certifies that he/she is the Secretary of \_\_\_\_\_, a corporation, company, legal entity organized and existing under the laws of the State of \_\_\_\_\_, that the foregoing is a true and correct copy of a Resolution duly adopted at a meeting of the Board of Directors of said corporation, company, legal entity held on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, at which meeting a quorum was at all times present and acting; that the passage of said Resolution is in full force and effect.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024

(Corporate Seal)

---

(Secretary)

NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this Bid, each bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or its knowledge and belief:

- (1) *The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other bidder or with any competitor.*
- (2) *Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and*
- (3) *No attempt has been made or will be made by the Bidder to induce any other person, partnership, or corporation to submit or not to submit a Bid for the purpose of restricting competition.*

A bid shall not be considered for award, nor shall any award be made where (1), (2) and (3) above have not been complied with; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the Bid a signed statement which sets forth in detail the reason therefor. Where (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 was made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or, has sold the same items to other customers does not constitute, without more, a disclosure within the meaning of this provision.

Any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a corporate Bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rules, regulation, or local law, and where such Bid contains the certification referred to in this section, shall be deemed to have been authorized by the board of directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the Bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

IN WITNESS WHEREOF, the undersigned have subscribed to this Certification and affirmed it as true under the penalties of perjury.

\_\_\_\_\_  
(Bidder)

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

\_\_\_\_\_  
(Person signing on behalf of Bidder)

Dated: \_\_\_\_\_, 2024.

NOTE:

(PENAL LAW SECTION 210.45) IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, a new provision has been added to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, both effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law) (the "Prohibited Entities List"). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the OGS website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to SFL § 165-a(3)(b).

Additionally, Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS Website, any Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended, or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the School District receive information that a Bidder/Contractor is in violation of the above-referenced certification, the School District will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the School District shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default. The School District reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a contract and subsequently appears on the Prohibited Entities List.

I, \_\_\_\_\_, being duly sworn, deposes and says that he/she is the \_\_\_\_\_ of the \_\_\_\_\_ Corporation and that neither the Bidder/Contractor nor any proposed subcontractor is identified on the Prohibited Entities List.

\_\_\_\_\_ (SIGNATURE)

SWORN to before me this,

\_\_\_\_\_ day of \_\_\_\_\_ 2024

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

END OF SECTION



# 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 2024  
(In words, indicate day, month, and year.)

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

Cazenovia Central School District  
31 Emory Ave.  
Cazenovia, NY 13035

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

TBD

for the portion of the following Project identified as the Contractor's Work in Article 2 of this Agreement:

(Name, location, and detailed description)

Cazenovia Central School District 2022 Capital Improvements Project  
Emory Ave. Complex – SED #

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

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

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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



## TABLE OF ARTICLES

|    |  |
|----|--|
| 1  | THE CONTRACT DOCUMENTS                                   |
| 2  | THE WORK OF THIS CONTRACT                                |
| 3  | DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION |
| 4  | CONTRACT SUM   |
| 5  | PAYMENTS   |
| 6  | DISPUTE RESOLUTION                                       |
| 7  | TERMINATION OR SUSPENSION                                |
| 8  | MISCELLANEOUS PROVISIONS                                 |
| 9  | ENUMERATION OF CONTRACT DOCUMENTS                        |
| 10 | INSURANCE AND BONDS                                      |

### EXHIBIT A BID FORMS AND BID BOND

### EXHIBIT B CONTRACTOR PRE-AWARD QUESTIONNAIRE FORM

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents comprise of (1) this Agreement between the Owner and Contractor ("Agreement"), (2) Advertisement for Bids, (3) Instructions to Bidders, (4) the General Conditions (AIA Document A232-2019, as amended), (5) Supplementary or other Conditions, if any, (6) Drawings, (7) Specifications, (8) Addenda issued prior to receipt of bids, including any bidding requirements in such Addenda, (9) The Contractor's Bid, (10) Modifications issued after execution of the Agreement, (11) the Contractor's Performance and Payment Bonds, (12) sample forms, (13) other information furnished by the Owner in anticipation of receiving bids, and (14) other documents listed in the Agreement, if any, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. A Modification is (1) a written amendment to the Contract Documents 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. 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. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents.

## ARTICLE 2 THE WORK OF THIS CONTRACT

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

## ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work is the date of this Agreement unless a different date is stated below, or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

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

The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☐ The date of this Agreement.

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

[ ]  
(Paragraphs deleted)

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

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

**§ 3.3 Substantial Completion of the Project or Portions Thereof**

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

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

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

**Portion of Work**

**Substantial Completion Date**

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

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

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

[ ]

[ ] By the following date:

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

**Portion of Work**

**Date to be substantially complete**

(Paragraph deleted)

**ARTICLE 4 CONTRACT SUM**

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

(Check the appropriate box.)

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

(Paragraph deleted)

(Based on the selection above, complete Section 4.2.)

**§ 4.2 Stipulated Sum**

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

**§ 4.2.2 Alternates**

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

Item

Price

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

Item

Price

Conditions for Acceptance

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

Item

Price

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

Item

Units and Limitations

Price per Unit (\$0.00)

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

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the 25<sup>th</sup> day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 30<sup>th</sup> day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 60 ( sixty ) days after the Construction Manager receives the Application for Payment. Additional procedures for Applications for Payment are set forth in Article 9 of the General Conditions.

Init.

/

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

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

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

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

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

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

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

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

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

*(Paragraphs deleted)*

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due: (Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five percent (5%) of the amount due, plus an amount necessary to satisfy any claims, liens, or judgments against the Contractor which have not been resolved, settled, or discharged.

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

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

*(Paragraphs deleted)*

§ 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.

*(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.)*

## § 5.2 Final Payment

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

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

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

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

*(Paragraphs deleted)*

§ 5.2.1.3 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 follow the submission and approval of 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 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 reasonable requested by the Owner, Architect, or Construction Management

### § 5.2.1.4 Compliance with the New York General Municipal Law

Notwithstanding Sections 5.1 and 5.2 above, all payments by the Owner to the Contractor will be made in accordance with Section 106-b(1)(a) of the New York General Municipal Law, or any successor statute governing payment by public owners to contractors on public work projects. The provisions of that section supersede, override, and replace anything in this Agreement or elsewhere in the Contract Documents that are or appear to be to the contrary, including but not limited to progress payments, retainage, substantial completion, reduction of retainage, reducing payments as a result of claims, liens, or judgments not suitably discharged, reducing payments for the value of incomplete work following substantial completion, and final completion. In addition, Contractor will make payments to its subcontractors and materialmen in accordance with Section 106-b(2) of the New York General Municipal Law, or any successor statute governing payment by contractors on public work projects to subcontractors and materialmen, which likewise supersede, override, and replace anything in this Agreement or elsewhere in the Contract Documents that are or appear to be to the contrary.

§ 5.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate New York Statutory Rate applicable to the obligations of Schools Districts.

*(Insert rate of interest agreed upon, if any.)*

%

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

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

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

### § 6.2 Binding Dispute Resolution

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

*(Check the appropriate box.)*

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

☐ Litigation with exclusive jurisdiction and venue in the New York State Supreme Court for the County where the project is located. Contractor waives any objection to jurisdiction and venue set forth herein.

☐ Other: *(Specify)*

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

## ARTICLE 7 TERMINATION OR SUSPENSION

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

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

*(Paragraphs deleted)*

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

*(Paragraphs deleted)*

## ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner's representative:

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

Cazenovia Central School District  
Superintendent of School  
31 Emory Avenue  
Cazenovia, NY 13035

§ 8.3 The Contractor's representative:

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

Init.

TBD

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

#### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance and bonds as set forth in AIA Document A232-2019 General Conditions of the Contract for Construction, Construction Manager as Advisor Edition, Article 11 – Insurance and Bonds.

*(Paragraph deleted)*

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

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

*(Paragraphs deleted)*

§ 8.8 Other provisions The Contractor represents and warrants to the Owner (in addition to, and not in lieu of, any other representations and warranties in the Contract Documents or other liability imposed by law with respect to the Contractor's duties, obligations, and performance under this Agreement), to survive execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work, that:

- .1 it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possess sufficient working capital to complete the Work and perform all obligations under this Agreement;
- .2 it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform all obligations under this Agreement;
- .3 it is authorized to do business in the State of New York and is properly licensed by all governmental, public, and quasi-public authorities with jurisdiction over it, the Work, and the Project;
- .4 its execution of and performance under this Agreement are within its duly authorized powers;
- .5 its duly authorized representative visited the site of the Project, became familiar with the local and special conditions under which the Work will be performed, and correlated the observations during such visit(s) with the requirements of the Contract Documents; and
- .6 it possesses the level of experience and expertise in administering, constructing, managing, and superintending projects of the size, complexity, and nature of this Project necessary to perform the Work with proper care, skill, and diligence.

### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
- .2 AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition
- .3 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

- .4 Drawings: All Contract Document Drawings

Init.

.5 Specifications: Specification Sections assigned to this Contract as Outlined in the Multiple Contract Summary

.6 Addenda, if any:

Number

Date

Pages

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

.7 Other Exhibits:

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

☐ Exhibit A - Bid Forms and Bid Bonds

☒ Exhibit B – Contractor Pre-Award Questionnaire Form

*(Paragraphs deleted)*

*(Paragraphs deleted)*

.8 Other documents, if any, listed below:

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

## ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of the AIA Documents A232-2019.

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

**Cazenovia Central School District**

OWNER *(Signature)*

*(Printed name and title)*

**TBD**

CONTRACTOR *(Signature)*

*(Printed name and title)*



# Additions and Deletions Report for AIA® Document A132® – 2019

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:55:10 ET on 05/23/2024.

## PAGE 1

**AGREEMENT** made as of the     day of     in the year 2024

...

Cazenovia Central School District  
31 Emory Ave.  
Cazenovia, NY 13035

...

TBD

for the ~~following Project:~~portion of the following Project identified as the Contractor's Work in Article 2 of this Agreement:

...

Cazenovia Central School District 2022 Capital Improvements Project  
Emory Ave. Complex – SED #

...

NA

...

NA

## PAGE 2

~~EXHIBIT A – INSURANCE AND BONDS~~10 INSURANCE AND BONDS

~~EXHIBIT A – BID FORMS AND BID BOND~~

~~EXHIBIT B – DETERMINATION OF THE COST OF THE WORK~~CONTRACTOR PRE-AWARD QUESTIONNAIRE FORM

...

The Contract Documents consist of ~~this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement,~~ comprise of (1) this Agreement between the Owner and Contractor ("Agreement"), (2) Advertisement for Bids, (3) Instructions to Bidders, (4) the General Conditions (AIA Document A232-2019, as amended), (5) Supplementary or other Conditions, if any, (6)

Drawings, (7) Specifications, (8) Addenda issued prior to receipt of bids, including any bidding requirements in such Addenda, (9) The Contractor's Bid, (10) Modifications issued after execution of the Agreement, (11) the Contractor's Performance and Payment Bonds, (12) sample forms, (13) other information furnished by the Owner in anticipation of receiving bids, and (14) other documents listed in the Agreement, if any, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. A Modification is (1) a written amendment to the Contract Documents 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. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, ~~representations,~~ representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears ~~in Article 9.~~ in Article 9. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents.

...

**§ 3.1** The date of commencement of the Work is the date of this Agreement unless a different date is stated below, or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

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

The date of commencement of the Work shall be:

PAGE 3

☐ Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

...

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

...

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

...

☒ Stipulated Sum, in accordance with Section 4.2 below

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

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

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

PAGE 4

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

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

**§ 4.3.2** The Contractor's Fee:

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

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

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

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

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

| Item  | Units and Limitations | Price per Unit (\$0.00) |
|---|-----------------------|-------------------------|
| § 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner’s review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work. |                       |                         |

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

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

§ 4.4.2 The Contractor’s Fee:  
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor’s Fee.)*

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

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

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

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

| Item   | Units and Limitations | Price per Unit (\$0.00) |
|--|-----------------------|-------------------------|
| § 4.4.7 Guaranteed Maximum Price   |                       |                         |
| § 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed — (\$ —), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. |                       |                         |

**§ 4.4.7.2 Alternates**

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

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

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

| Item  | Price | Conditions for Acceptance |
|---|-------|---------------------------|
| <b>§ 4.4.7.3</b> Allowances, if any, included in the Guaranteed Maximum Price:<br><i>(Identify each allowance.)</i> |       |                           |

| Item  | Price |
|---|-------|
| <b>§ 4.4.7.4</b> Assumptions, if any, upon which the Guaranteed Maximum Price is based:<br><i>(Identify each assumption.)</i> |       |

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

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

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

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

...

**§ 5.1.3** Provided that an Application for Payment is received by the Construction Manager not later than the 25<sup>th</sup> day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 30<sup>th</sup> day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 60 ( sixty ) days after the Construction Manager receives the Application for Payment. Additional procedures for Applications for Payment are set forth in Article 9 of the General Conditions.

**PAGE 5**

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~§ 5.1.7.1~~ 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 due: (Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five percent (5%) of the amount due, plus an amount necessary to satisfy any claims, liens, or judgments against the Contractor which have not been resolved, settled, or discharged.

~~§ 5.1.7.1.1~~ The following items are not subject to retainage: N/A

...

~~§ 5.1.7.2~~ Reduction or limitation of retainage, if any, shall be as follows:  
(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)

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

**PAGE 6**

.3 the Contractor has fully performed and complied with the closeout and final payment requirements of the Contract Documents.

...

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

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

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

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

**§ 5.2.1.3** 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 follow the submission and approval of 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 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 reasonable requested by the Owner, Architect, or Construction Management

**§ 5.2.1.4 Compliance with the New York General Municipal Law**

Notwithstanding Sections 5.1 and 5.2 above, all payments by the Owner to the Contractor will be made in accordance with Section 106-b(1)(a) of the New York General Municipal Law, or any successor statute governing payment by public owners to contractors on public work projects. The provisions of that section supersede, override, and replace anything in this Agreement or elsewhere in the Contract Documents that are or appear to be to the contrary, including but not limited to progress payments, retainage, substantial completion, reduction of retainage, reducing payments as a result of claims, liens, or judgments not suitably discharged, reducing payments for the value of incomplete work following substantial completion, and final completion. In addition, Contractor will make payments to its subcontractors and materialmen in accordance with Section 106-b(2) of the New York General Municipal Law, or any successor statute governing payment by contractors on public work projects to subcontractors and materialmen, which likewise supersede, override, and replace anything in this Agreement or elsewhere in the Contract Documents that are or appear to be to the contrary.

**§ 5.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.New York Statutory Rate applicable to the obligations of Schools Districts.

**PAGE 7**

[ ] Litigation in a court of competent jurisdiction with exclusive jurisdiction and venue in the New York State Supreme Court for the County where the project is located. Contractor waives any objection to jurisdiction and venue set forth herein.



...

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

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

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

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

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

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

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

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

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

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

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

**§ 7.3 Suspension**

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

...

Cazenovia Central School District  
Superintendent of School  
31 Emory Avenue  
Cazenovia, NY 13035

PAGE 8

TBD

...

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

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

...

#### **§ 8.7 Relationship of the Parties**

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

**§ 8.8** Other provisions:provisions The Contractor represents and warrants to the Owner (in addition to, and not in lieu of, any other representations and warranties in the Contract Documents or other liability imposed by law with respect to the Contractor's duties, obligations, and performance under this Agreement), to survive execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work, that:

- .1 it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possess sufficient working capital to complete the Work and perform all obligations under this Agreement;
- .2 it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform all obligations under this Agreement;
- .3 it is authorized to do business in the State of New York and is properly licensed by all governmental, public, and quasi-public authorities with jurisdiction over it, the Work, and the Project;
- .4 its execution of and performance under this Agreement are within its duly authorized powers;
- .5 its duly authorized representative visited the site of the Project, became familiar with the local and special conditions under which the Work will be performed, and correlated the observations during such visit(s) with the requirements of the Contract Documents; and
- .6 it possesses the level of experience and expertise in administering, constructing, managing, and superintending projects of the size, complexity, and nature of this Project necessary to perform the Work with proper care, skill, and diligence.

...

- ~~.2~~ AIA Document A132™-2019, ~~Exhibit A, Insurance and Bonds Exhibit~~  
~~.3~~ AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition  
~~.4~~ .3 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

...

- ~~.5~~ .4 Drawings: All Contract Document Drawings

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

- ~~.6~~ .5 Specifications: Specification Sections assigned to this Contract as Outlined in the Multiple Contract Summary

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

PAGE 9

- ~~.7~~ .6 Addenda, if any:

- ~~.8~~ .7 Other Exhibits:

...

☐ AIA Document A132™-2019, Exhibit B, Determination of the Cost of the Work Exhibit A - Bid Forms and Bid Bonds

☐ AIA Document E235™-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below: ☒ Exhibit B – Contractor Pre-Award Questionnaire Form  
*(Insert the date of the E235-2019 incorporated into this Agreement.)*

- ☐ The Sustainability Plan:

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

- ☐ Supplementary and other Conditions of the Contract:

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

- ~~.9~~ .8 Other documents, if any, listed below:

...

## ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of the AIA Documents A232-2019.

...

**Cazenovia Central School District**

**TBD**

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

***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:55:10 ET on 05/23/2024 under Order No. 3104240046 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

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

\_\_\_\_\_  
*(Dated)*

# DRAFT AIA® Document A232™ – 2019

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

### for the following PROJECT:

(Name, and location or address)

Cazenovia Central School District

2022 Capital Improvements Project 2024 Walk-in Cooler & Freezer Project

«—»  
«—»

### THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

«Campus Construction Management Group, Inc.»«—»  
1241 Pittsford Victor Road«—»  
Pittsford, NY 14534NA

### THE OWNER:

(Name, legal status, and address)

«—»«—»  
Cazenovia Central School District «—»  
31 Emory Ave.  
Cazenovia, NY 13035

### THE ARCHITECT:

(Name, legal status, and address)

Tetra Tech Architects & Engineers  
10 Brown Road  
Ithaca, NY 14850NA

«—»«—»  
«—»

#### 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.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

|    |   |
|----|---|
| 1  | GENERAL PROVISIONS                                      |
| 2  | OWNER   |
| 3  | CONTRACTOR  |
| 4  | ARCHITECT AND CONSTRUCTION MANAGER                      |
| 5  | SUBCONTRACTORS  |
| 6  | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS        |
| 7  | CHANGES IN THE WORK                                     |
| 8  | TIME  |
| 9  | PAYMENTS AND COMPLETION                                 |
| 10 | PROTECTION OF PERSONS AND PROPERTY                      |
| 11 | INSURANCE AND BONDS                                     |
| 12 | UNCOVERING AND CORRECTION OF WORK                       |
| 13 | MISCELLANEOUS PROVISIONS                                |
| 14 | TERMINATION OR SUSPENSION OF THE CONTRACT               |
| 15 | CLAIMS AND DISPUTES                                     |
| 16 | <u>CONFORMANCE TO THE LAWS OF THE STATE OF NEW YORK</u> |



## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents comprise (1) the Agreement between the Owner and Contractor (“Agreement”), (2) Advertisement for Bids, (3) Instructions to Bidders, (4) these General Conditions, (5) Supplementary or other Conditions, if any, (6) Drawings, (7) Specifications, (8) Addenda issued prior to receipt of bids, (9) The Contractor’s Bid, (10) Modifications issued after execution of the Agreement, (11) the Contractor’s Performance and Payment Bonds, (12) other documents listed in the Agreement, if any. A Modification is (1) a written amendment to the Contract Documents 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. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents.

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

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction (“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 (except in the event the Owner accepts an assignment under Section 5.4) 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 are, however, entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect’s consultants, (2) between the Owner and the Construction Manager or the Construction Manager’s consultants, (3) between the Owner and the Architect or the Architect’s consultants, (4) between the Contractor and the Construction Manager or the Construction Manager’s consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor, (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

**§ 1.1.3 The Work.** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner’s own forces and Separate Contractors.

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

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

**§ 1.1.7 The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

**§ 1.1.8 The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.9 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

#### **§ 1.1.11 MISCELLANEOUS DEFINITIONS**

**§ 1.1.11.1** The term "product" as used herein includes materials, systems and equipment.

**§ 1.1.11.2** The word "Provide" is used herein as a term contraction and unless otherwise specifically noted is to mean "furnish, install, connect up complete, test, place in operation and service."

**§ 1.1.11.3** "Approved," "approved equal," "approved equivalent," "equal to," "equivalent to," "as directed," and "as required" all include "to the satisfaction of the Architect and Construction Manager."

**§ 1.1.11.4** "Remove" means "dismantle and take away from premises without added cost to Owner."

**§ 1.1.11.5** "Supply" means "purchase and deliver to jobsite."

**§ 1.1.11.6** The terms "install" or "furnish all labor" are used herein as term contractions and unless specifically noted otherwise are to mean "perform all operations connected with installation of work including unloading materials to be installed, supplying all necessary equipment and rigs to do the work, test, place in operation and service."

**§ 1.1.11.7** "Extract" means "carefully dismantle and store where directed by Architect-Construction Manager or reinstall as indicated on drawings or as described in the Specifications."

**§ 1.1.11.8** "Review" and "reviewed" include the qualification "for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents."

**§ 1.1.11.9** The terms "Furnish" or "Furnish all material" are used herein as term contractions and unless specifically noted otherwise are to mean "supply and deliver to the job site all materials and/or equipment so specified."

**§ 1.1.11.10** The word "Replace" is used herein as a term contraction and unless otherwise specifically noted is to mean "remove existing and provide new."

**§ 1.1.11.11** Any reference to "Architect" or "Construction Manager" will be substituted for "Owner" this is to apply to all references.



## § 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 must be consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials, or equipment, such words or phrases shall be interpreted in accordance with the meaning. Even if items are missing from the Drawings or Specifications, but are normally required for proper operation of architectural, plumbing, mechanical, electrical, and other systems, or to complete otherwise incomplete construction, or to meet governing code requirements, they must be included by the Contractor, unless the Contractor sought and received contradictory interpretation or clarification from the Architect, shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.1.2 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) existing building and site 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 sole responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by Contractor or any Subcontractor to comply with the requirements of this Section 1.2.1.2.

§ 1.2.2 Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings do 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 pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements must be followed, provided such items are furnished as specified. No such conflict gives rise to an adjustment in the Contract Sum or Contract Time. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.2.1 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 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 reference of the “Specifications” regarding the division or separation of the work among types of trades or occupations is only for the suggested purpose of coordinating the work of the different trades, etc. but it shall be the Contractor’s entire responsibility for the proper coordination and completion of all the Work described in the “Specifications” whether performed by the Contractor or its Subcontractors, if any.

§ 1.2.2.4 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.

**§ 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.

§ 1.2.3.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities, from highest to lowest:

- .1 Change Orders.
- .2 Agreement.
- .3 Addenda, with those of later date having precedence over those of earlier date.
- .4 Supplementary, Special, or other Conditions, other than the General Conditions, as may be part of the Contract Documents.
- .5 General Conditions of the Contract for Construction.
- .6 Specifications.
- .7 Drawings

In case of an inconsistency between Drawings and Specifications or within other Documents not clarified by addendum the better quality or greater quantity of Work shall be provided in accordance with the Architect’s interpretation. The Architect’s determination shall be final.

§ 1.2.4 Notwithstanding Section 1.2.3.1, in the case of any inconsistency with respect to the quality or quantity of Work required by the Project Manual, Drawings and/or Specifications, or within any of these documents, which have not been clarified by addenda, the higher quality standard and/or greater quantity of Work must be provided, unless the Architect decides another interpretation is more consistent with the intent of the Project and issues a written clarification to that effect. The Architect’s interpretations and decisions with respect to these issues are final.

§ 1.2.5 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. All Contractors and Subcontractors shall cooperate in determining the construction of systems, running of pipe, and locating equipment.

§ 1.2.5.1 Any necessary variations in routing or installation must be made to conform to the intent of the Contract Documents without additional costs to the Owner. Where there are intersections or obstructions involving ducts, piping, or any other equipment requiring offsets, the Contractor acknowledges that it gave particular consideration to clearances in advance of submitting its bid, and that no additional costs to the Owner for these issues will be considered.

§ 1.2.5.2 If conflicting conditions or interferences develop, the trades involved shall confer with other trades whose work is affected to determine a solution acceptable to all interested parties. The suggested solution must be submitted to the Architect and Construction Manager for comment and, if necessary, written approval.

§ 1.2.5.3 The Contractor agrees that the failure to repeat typical details, figures, or notes on all Contract Drawings or in other Contract Documents is not a basis for claims for additional cost or time.

§ 1.2.6 The Contract Documents intend a finished product of such character and quality as described in and reasonably inferred from the Contract Documents, and the Contractor shall include sufficient allowance to make its Work complete and operable, fitting with the work of other contractors and the Owner, and in compliance with standard construction practices and the ordinances, codes, and regulations of all bodies or persons having governmental or regulatory authority over the Contractor and its Work.

§ 1.2.7 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 operation 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.

§ 1.2.8 When reference is made to specifications of a manufacturer, trade association, governmental agency, reference standard or similar source (such as ASTM, ASA, AISC, ACI, etc.) such is made part of these specifications, having the force and effect as though reproduced herein, and upon entering into the Contract the Contractor acknowledges his familiarity with those pertaining to his work.

### § 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 shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

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

§ 1.5.3 The Contractor may not reproduce the Contract Documents in whole or in part for use as a 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.

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

### § 1.6 Notice

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

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

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building

Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

## § 1.8 Building Information Models Use and Reliance

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

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the ~~Construction Manager and the Architect does~~ not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Construction Manager is the Owner's representative with authority to act on behalf of the Owner but only to the extent provided for in the C132-2009 Agreement between the Construction Manager and the Owner.

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

§ 2.1.3 The Owner, Construction Manager, -and -/or the Architect shall not supervise, direct or have control of authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction of the safety precautions and programs incident, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the work. Owner, Construction Manager, and Architect will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

§ 2.1.4 The Owner shall have the right to contract with other contractors to perform other work related to the Project. The Contractor will coordinate its Work with the work of other contractors without claims for damages or delay in prosecution of the Contractor's Work.

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

~~§ 2.2.1 Not used. Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

~~§ 2.2.2 Not used. Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

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

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

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

**§ 2.3.1** ~~Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. All permits and fees, approvals, easements, assessments and charges required for construction, use or occupancy of the permanent structures or for permanent changes in the 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.~~

**§ 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** ~~Not used. If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.~~

**§ 2.3.5** ~~The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. 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 in the Contract Documents. 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 and Construction Manager. The Contractor shall establish all lines and levels required to execute the Work and shall bear all costs involved and shall be responsible for their accuracy and maintenance.~~

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

**§ 2.3.7** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor (1) one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.



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

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

~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. 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 Contractor, (5) discards disregards the instructions of the Architect, Owner 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 part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by sSection 6.1.3. 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.~~

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ (3) ~~three-day~~ period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with visually observable conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. 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 climactic conditions, (3) anticipated labor supply and costs, and (4) availability and cost of materials, tools, and equipment. Except for paying the Contract Sum, 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 is solely responsible for providing a safe place for the performance of the Work. The Owner is not required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.1. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.1.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3 and shall at once report in writing to the Construction Manager and Architect errors, inconsistencies or omissions discovered. The Contractor will not be liable to the Owner, Construction Manager or 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 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 Architect, the Contractor shall assume full responsibility for such performance and shall bear sole responsibility for the costs for correction.

**§ 3.2.2** The Contractor shall, before starting each portion of the Work, (1) carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, (2) take field measurements of any existing conditions related to that portion of the Work, and (3) observe any conditions at the site affecting it. The Contractor shall promptly report to the Architect and the Construction Manager any errors, inconsistencies or omissions, or any discrepancy with applicable laws, statutes, ordinances, codes, rules, regulations, or lawful orders of public authorities ascertained by, discovered by, or made known to the Contractor, as a Request for Information ("RFI") in such form as the Architect may require and as described in Section 3.2.6. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** Failure by the Contractor to promptly report any errors, inconsistencies, or omissions in the Contract Documents, or any discrepancy with applicable laws, statutes, ordinances, codes, rules, and regulations, or lawful orders of public authorities, ascertained by, discovered by, or made known to the Contractor, or which the Contractor reasonably should have known, constitutes a waiver by the Contractor of any claim that otherwise might result in a change in the Contract Sum or Contract Time.

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

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been

avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor is not liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules, regulations, and lawful orders of public authorities.

If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**§ 3.2.5** 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 Architect and Construction Manager 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 or 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, it 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 grades, elevations, dimensions, or locations must be promptly rectified by the Contractor without any additional cost to the Owner.

**§ 3.2.6 Requests for Information.** The Contractor may submit RFIs to the Architect and Construction Manager 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 and Construction Manager 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 or Construction Manager for RFI responses that in the opinion of the Architect and Construction Manager 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.

**§ 3.2.7** 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 is not entitled to any extra payment due to any unforeseen difficulties or distances encountered in the Work.

**§ 3.2.8 Underground Conditions.** The locations, depths, and data as to underground conditions were obtained from records, surface indications, and data furnished by others. Information furnished is solely for the convenience of the Contractor without any warranty, express or implied, as to its accuracy or completeness. The Contractor cannot make a Claim 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, unless the conditions constitute a material difference under Section 3.2.11.

**§ 3.2.9 Construction Stresses.** The Contractor is solely responsible for conditions that develop during construction and in the event any structure is dislocated, overstrained, or damaged so as to affect its usefulness, the Contractor is solely responsible. The Contractor shall take whatever steps necessary to strengthen, relocate, or rebuild the structure to meet requirements of the Contract Documents.

**§ 3.2.10 Restoration and Repair of Damaged Property.** The Contractor is responsible for restoration and/or repair of utilities, private property, buildings, pavement, walkways, roads, or other property damaged by its activities under the Contract Documents.

**§ 3.2.11 Not used.**



§ 3.2.12 Not used.

§ 3.2.13 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, and Architect, while believing such information to be substantially correct, assumes no responsibility thereof.

§ 3.2.14 If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear full responsibility for the attributable costs for correction.

**§ 3.3 Supervision and Construction Procedures**

§ 3.3.1 If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures."

The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instruction concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety as to such instructions and, except as stated below, is fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice to the Owner, the Construction Manager, and the Architect with specific objections and proposed changes, and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor or reaching agreement with the Architect as to resolution of the safety issues, the Contractor is not responsible for any loss or damage relating to safety arising solely from the required means, methods, techniques, sequences, or procedures to which the Contractor objected.

The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.1.1 The Contractor's obligations under the Contract Documents include, without limitation:

- .1 Review of all specified construction and installation procedures, including, without limitation, those recommended by manufacturers.
- .2 Advising the Construction Manager and Architect:
  - .1 if a specified procedure deviates from standard 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 in Section 3.5; and

.4 Organizing and conducting pre-installation meetings, coordinated with the Architect and Construction Manager.

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

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

§ 3.3.4 Where equipment lines, piping, ductwork, and/or conduit are shown diagrammatically, the Contractor is 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.

§ 3.3.5 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 other than the Contractor.

§ 3.3.6 The Contractor, his employees and Subcontractors shall be subject to such rules and regulations for the conduct of the Work as the Owner may establish. The Contractor shall be responsible for the enforcement among his employees of the Owner's requirements.

**§ 3.4 Labor and Materials**

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

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

§ 3.4.3.1 Persons whose work is unsatisfactory to the Owner, Architect or Construction Manager, or who is unsatisfactory to the Owner or Architect, or who is reasonably considered by them to be unskilled or otherwise objectionable, may be immediately dismissed from the Project site upon notice to the Contractor. Any persons so dismissed shall be immediately replaced by the Contractor so as not to delay the progress of the Work.

**§ 3.5 Warranty**

§ 3.5.1 The Contractor warrants to the Owner, Architect and Construction Manager that materials warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents specifically require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance by persons other than the Contractor or its Subcontractors, improper operation by persons other than the Contractor or its Subcontractors, normal wear and tear, and normal usage. If required by the Architect, the

Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided for the Work. The Contractor, at its expense, shall remove and replace materials not meeting specifications or failing to meet warranties by manufacturers, regardless of whether incorporated into the Work. The Contractor shall promptly replace or correct any of the Work the Architect rejects as failing to conform to the requirements of the Contract Documents. The foregoing warranty obligations are not limited by the provisions of Article 12 and are in addition to and not in limitation of any other warranty set forth in the Contract Documents or required by law. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of Owner. If required by Architect, Contractor shall furnish satisfactory evidence (including reports of required tests) as to be the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

~~The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.~~

**§ 3.5.2** ~~The Contractor shall perform all warranty obligations and responsibilities for the Work under the Contract Documents. Upon completion of the Work, the Contractor shall assign and provide to the Owner all written warranties and guarantees from Subcontractors, suppliers, and material or equipment manufacturers. The Contractor shall fully cooperate with the Owner in the event the Owner pursues remedies under any warranties or guarantees assigned to the Owner. The Contractor acknowledges that its obligations to the Owner under this Section 3.5.2 are joint and several during the Warranty Period with its Subcontractors, suppliers, vendors and manufacturers of all materials and equipment supplied on account of the Work. Any notice given to the Contractor by the Owner, Architect, or Construction Manager regarding any deficiency in the Work covered by this Section 3.5 and Article 12 will toll the corrections period under Article 12 until all corrections or remedial actions necessary are taken with respect to such deficiency. The Contractor is responsible for all harm caused by its failure to maintain equipment and materials installed through the Contractor's completion of its Work. The requirements of this Section 3.5 will continue notwithstanding termination of the Contractor for any reason. The foregoing warranty obligations are not limited by the provisions of Article 12 and are in addition to and not in limitation of any other warranty set forth in the Contract Documents or required by law.~~

~~All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.~~

**§ 3.5.3** ~~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, nor do any corrections - period limit the time in which the Owner may pursue any such action, right, or remedy.~~

**§ 3.5.4** ~~Contractor shall be responsible for all maintenance of the Work through Substantial Completion or assignment of applicable warranties, whichever is later.~~

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

**§ 3.5.6** ~~In emergencies occurring during the guarantee 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 his forces arrive at the Work.~~

**§ 3.5.7** ~~The Contractor shall obtain and furnish to the Architect written Manufacturer's Warranties for all major materials, systems and equipment. The terms of the warranty shall be as individually specified in the Contract Documents for the item; if no term is specified, the terms shall be a minimum of one (1) year, but not less than the standard period of the Manufacturer's Warranty for the item.~~

### § 3.6 Taxes

§ 3.6.1 The Owner is exempt from payment of federal, state, and local taxes, and from payment of sales and compensating use taxes of the State of New York and its cities and counties on all materials and supplies sold to the Owner pursuant to the provisions of the Contract, and the Contractor warrants and represents that these taxes were not included in the amount of its bid or the Contract Sum. This exemption does not, however, apply to tools, machinery, equipment, or other property purchased or leased by or to the Contractor or a Subcontractor. The Contractor and its Subcontractors are responsible for any and all applicable taxes, including sales and compensating use taxes, on such purchased or leased tools, machinery, equipment or other property, and the Contractor warrants and represents that such taxes were included in the amount of its bid and the Contract Sum.

§ 3.6.2 The Contractor accepts full and exclusive liability for payment of any and all contributions, assessments, or taxes now or hereafter imposed by the Government of the United States, and/or by any city, town, village, other municipality, county, or state, that are measured by salaries, wages, or other remuneration of employees of the Contractor, Subcontractors, and Sub-subcontractors for performance of the Work.

~~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.~~

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

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

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15. No adjustment in the Contract Time or Contract Sum will occur, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed in the Contract Documents or that reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, and reviews, or (2) inspections, tests, and reviews the Contractor had the opportunity to make or should have performed in connection with the Project.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until

otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

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

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

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent project manager and superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent are as binding as if given to the Contractor. The Contractor's project manager and superintendent shall attend all project meetings, regardless of whether held prior to or following Substantial Completion of the Work.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect, through the Construction Manager, the name and qualifications of its proposed superintendent. The Construction Manager will reply within fourteen (14) days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent, or (2) that any of them require additional time to review the qualifications. Failure of the Construction Manager to reply either way within the 14-day period constitutes notice of no reasonable objection. The Contractor shall not change the Project Manager during the course of construction without prior written notification to the Architect and Owner at least 30 days prior to the proposed date of change.

§ 3.9.3 The Contractor shall not employ a proposed project manager or superintendent to whom the Owner, Construction Manager, or Architect makes reasonable and timely objection. The Contractor shall not change the project manager or superintendent without the Owner's consent, which will not unreasonably be withheld or delayed.

§ 3.9.4 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.



## § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly, but in no event later than fifteen (15) working 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. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project schedule to the extent required by the Contract Documents and shall provide for expeditious and practicable execution of the Work. 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 schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

~~The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.~~

§ 3.10.1.1 The Work must be performed continuously and without interruption, in accordance with the approved construction schedule, so that all Work can be completed in the time set forth in the Contract Documents.

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

§ 3.10.1.3 All Work must be completed on or before the dates established in the Contract Documents and in accordance with the approved construction schedule.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall prepare a construction schedule comprising a schedule as described in Section 3.10.3.1. The Contractor must provide copies of all electronic schedule documents to the Construction Manager for review. The schedule must contain time-scaled logic diagrams and all other data specified in Section 3.10.3.1. The diagrams must show activities of the Project in detail and in summary format. The diagrams must also show the order and interdependence of activities and the sequence in which the Work will be accomplished, incorporating the schedule summary activities and milestone dates indicated, and as further planned by the Contractor. All logical relationships must be identified. The use of imposed start dates will also be limited. The retained logic mode must be used for calculations. The construction schedule must be provided within fifteen thirty-(3015) days of the date of the Notice to Proceed.

§ 3.10.3.1 In addition to construction activities, the schedule must include, without limitation:

- .1 Testing activities/required inspections (where applicable).

- .2 Subcontractor selections and approvals (proposed major subcontractors to be submitted within 48 hours following the date of opening of the Contractor's bid to the Owner).
- .3 Shop drawing preparation and approval activities. Contractor must sequence submissions to provide sufficient time for the coordination of shop drawings of one trade that impact other trades, mock-ups, and pre-installation meetings.
- .4 Procurement schedule (order dates, fabrication, deliveries, and long lead items).
- .5 Requirements for any on-site shutdowns that may impact work.
- .6 Training and/or instruction of Owner personnel.

§ 3.10.3.2 The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in producing and coordinating all schedules for incorporation into the overall Project schedule assembled by the Construction Manager. The Contractor shall make revisions to its construction schedule and its submittal schedule as deemed necessary by the Construction Manager and Architect to conform to the Project schedule.

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

§ 3.10.4 In the event the Owner determines that the performance of Work has not progressed to the level of completion required of the Contract Documents or that the Contractor has failed to maintain the construction 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 dates set forth in the Contract Documents and the Project Sschedule. The Contractor shall not be entitled to an adjustment in Contract Sum or Contract Time in connection with extraordinary measures required by the Owner. The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

~~Not used.~~

§ 3.10.5 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 Contactor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

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

§ 3.10.7 The Owner reserves the right to withhold payment until such time as the Contractor submits a recovery plan and daily schedule to complete all necessary (including, as necessary, acceleration of the Work by means of overtime, additional crews, additional shifts, additional equipment and/or re-sequencing of the Work) to achieve completion of the remaining milestone dates in the construction schedule and Project schedule. The cost of preparing and performing the recovery schedule shall be borne solely by the Contractor.

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

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and approved by the Architect. Resubmission of rejected documents shall be performed with 10 calendar days, or sooner if required by the progress of construction. No claim for delay or cost shall be accepted as a result of rejected submittal documents. If the Architect is required to review the Contractor's submittal more than twice, the Contractor shall bear the cost and expense associated with such addition review as set forth in the project Manual.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.8.1 Contractor's Expense: All data to be provided by Contractor in support of any proposed "or-equal" or substitute item will be at Contractor's expense.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.



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

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

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

### § 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

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

§ 3.13.3 Only materials and equipment to be used directly in the Work may be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it must be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall 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 must be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work are free from all debris, building materials, and equipment likely to cause hazardous conditions.

### § 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.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project, and shall remove all Work-related stains, spots, marks, dirt, mortar smears, plaster smears, paint smears, caulking smears, and other foreign materials from exposed surfaces, leaving no residue or evidence of such foreign materials on the exposed surfaces.

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

**§ 3.15.2** 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 for such work.

### § 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 governmental agencies with jurisdiction over the Project must at all times have access to the Work for their official functions wherever it is in preparation or progress.

### § 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** Personal Injury and Property Damage. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager and Architect's Consultants and their respective directors, trustees, officers, employees, agents, consultants, interim administrators, authorized volunteers and committee members, student, teachers, auxiliary instructors, and members of the Board of Education (collectively "Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, when such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself, and including loss of use), but only to the extent caused, in whole or part, by the negligent acts or omissions, or other culpable conduct, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by an Indemnitee.

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. 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 subcontractor: "To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless the Contractor, Owner, Construction Manager Owner's consultant's, Architect,

Architect's consultants, and each of their respective representatives, employees, directors, officers, consultants and agents, from and against any and all claims, suits, actions, debts, damages, fines, penalties, costs, charges and expenses, including attorneys' fees and court costs, arising out of, relating to or resulting from the performance of this Subcontract, including, but not limited to, bodily injury and/or property damage, to the extent caused, in whole or in part, by acts, actions, omissions, negligence, fault or breach of the Subcontractor, its employees, agents, subcontractors, suppliers and/or materialmen, regardless of whether or not such claim is caused in part by a party indemnified hereunder."

**§ 3.18.2 Employee Personal Injuries.** In claims against any Indemnitee 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 is not limited by a limitation on the 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.

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 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.

**§ 3.18.4 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 property of any of the Indemnitees.

**§ 3.18.5 Intellectual Property.** The Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against any claims or demands for patent fees, copyright fees, license fees, royalties, damages from infringements, or injunctive relief on account of legal protection of any invention, machine, article, process, patent, copyright, design, or product used by the Contractor in performing the Work, unless such use is required by the Contract Documents or where alleged violations are contained in Drawings, Specifications, or other documents prepared by the Architect. In the event of any injunction or legal action regarding such claims or demands result in stopping the Work in whole or part, the Owner has the right to direct the Contractor to change the manner of performance of the Work to avoid such stoppage, all costs and expenses occasioned by such direction shall be borne solely by the Contractor, unless the work stoppage results solely from the Contractor employing a use required by the Contract Documents or when alleged violations are contained in Drawings, Specifications, or other documents prepared by the Architect. However, if the Contractor, prior to any such claims or demands, has reason to believe that a required use infringes a copyright, patent, or other legal protection, the Contractor must promptly so advise the Architect and Construction Manager, and in the absence of such advice will be liable to the Owner to the extent such advice would have prevented additional costs to the Owner arising from such claims or demands.

**§ 3.18.6 Other Claims.** For any claims not specifically identified elsewhere in this Section 3.18, the Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against any and all liability, claims, damages, losses, suits, demands, costs, charges, attorney's fees, and expenses of whatever kind or nature that the Indemnitees may directly or indirectly incur, suffer, or be required to pay by reason of, or in consequence of, the intentional conduct, negligent acts or omissions, breach of contract, or other fault of the Contractor or its Subcontractors.

**§ 3.18.7 Enforcement Costs.** 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 Full Defense.** Subject to Section 3.18.9, all obligations of the Contractor under this Section 3.18 to defend the Indemnitees are obligations to provide full defenses at the sole cost and expense of the Contractor, regardless of any alleged culpability on the part of any Indemnatee or any ultimate determination of relative shares of liability of any Indemnatee and the Contractor.

**§ 3.18.9 Conformance to Law.** 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 are 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 Survival and Other Bases for Defense and Indemnity Obligations.** All provisions of this Section 3.18 will survive termination of the Agreement for any reason, or Final Completion. No obligations under this Section 3.18 negate, abridge, or reduce other rights or obligations to defense and indemnity, including but not limited to common law indemnity, that exist as to a party or person described in this Section 3.18.

**§ 3.18.11 Other Contractors and Subcontractors.** The Owner is not liable to the Contractor or any Subcontractor for damages caused by any breach of contract, delay in performance, intentional conduct, negligence, act, or omission by other contractors or subcontractors with contracts for performance of any portion of the Work on the Project, and the Contractor waives all claims for such damages.

## **§ 3.22 PHOTO ID**

**§ 3.22.1** The Contractor shall provide reasonable and visible photographic identification for each employee, subcontractor, or other person at the Project site, and shall, upon request of the Owner, make available a list of names of those employees, subcontractors, or others working under the direction of the contractor at the Project site. Any such identification shall be reasonably visible to the Construction Manager's, Architect's and Owner's personnel visible to the Architect and to Owner's personnel at all times to allow the Owner to maintain the safety and security of Owner's buildings, property and persons under its control. Contractors failing to abide by this requirement shall be prohibited from working at the site and shall be responsible for any consequent delays or added costs to the owner as result of such noncompliance.

## **ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

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

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

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

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

and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

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

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule. Upon issuance of the Project construction schedule, each Contractor will assume full responsibility for the execution of their Work in the allotted duration times.

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

§ 4.2.6 **Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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

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

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the



Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

§ 4.2.17 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.19 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

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

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

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

§ 5.2.1.1 Time is of the essence for this Project and under the Contract. Prime Contractors shall award subcontracts to entities capable of maintaining the Project schedule.

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

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.~~ No increase in the Contract Sum or Contract Time is allowed as a result of objection to any proposed person or entity. The Owner and Architect reserve the right to contact the proposed persons or entities after award of contract as required to expedite the project.

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

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

~~§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the site under terms and conditions identical or substantially similar to those governing the Contract Documents, including those portions related to insurance and waivers of subrogation.~~

~~§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them. When the Owner performs construction or operations with the Owner's own forces, or through persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.~~

§ 6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate



Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

## § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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

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

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5. In the event of such damages, the Contractor shall promptly attempt to resolve any dispute with the damaged party. If such a damaged party makes any claim or commences a legal proceeding against the Owner, Construction Manager, or Architect, the Contractor shall defend, indemnify, and hold them harmless against and from such claim or proceeding at the Contractor's sole expense.

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

## § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

## § 7.2 Change Orders

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

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

**§ 7.2.2** Agreement on any Change Order constitutes a final settlement of all 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 and any and all adjustments to the Contract Sum and the Contract Time. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payments as if such Work were originally part of the Contract Documents.

## § 7.3 Construction Change Directives

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. Pending agreement on a Change Order, the Contractor shall provide the Construction Manager such information and documentation as the Construction Manager requires to substantiate adjustment to the Contract Sum in accordance with Section 7.3.3. The Contractors' proposal for such adjustment must be accompanied by a complete itemization of anticipated costs, including labor, materials, and subcontracts.

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.
- .6 Costs of Bonds shall be limited to 1% of the total additional cost. A 1% Bond credit shall be applied to all credit proposals. 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 Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect, without applying any percentage for overhead or profit. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The allowance for combined overhead and profit includes supervision, taxes, insurance, field office and all other general expenses and shall be included in the total cost to the Owner based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, a combined maximum of fifteen percent (15%) of the amount due between Prime Contractor and Subcontractor.

.3 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, material, and subcontracts. Labor and material shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also.

.4 Costs of Bonds shall be limited to one percent (1%) of the total additional cost. A one percent (1%) Bond credit shall be applied to all credit proposals. Bond premiums and/or credits shall be invoiced per per Change Order. Lump sum bond premium requests will not be considered at the end of the project.

.5 Overhead and profit shall include, but not limited to, the following:

.1 home office expenses;

.2 field office expense;

.3 supervision;

.4 project management & estimation;

.5 small tools & equipment;

.6 research & layout;

.7 inspections & permits

.8 material handling;

.9 record drawings; and

.10 safety and cleanup

## § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order

for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

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

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

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

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

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

### § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner. The date of commencement of the Work will not be changed by the effective date of insurance required of the Contractor. In the event the effective date of insurance required of the Owner is later than the latest effective date of insurance required of the Contractor, the date of commencement will be adjusted accordingly. The work can not start until required insurance and bonds are provided and the contract has been executed.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor agrees that the Work will be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion within the time specified. It is expressly agreed by the Contractor that the time for completion of the Work is a reasonable time for its completion, taking into consideration the average climatic range and usual weather conditions prevailing in the Project's locality.

§ 8.2.4 In no case may the Contractor delay the progress of the Work, in whole or part, on account of changes in the work or disputes caused by proposed or ordered changes in the work, or any disputes or disagreements as to the equitable value of changes.

§ 8.2.5 If the Contractor does not achieve Substantial Completion within the Contract Time established in the Agreement, the Contractor shall reimburse the Owner for payments made to the Architect and Construction Manager for additional services rendered by either of them from the end of the Contract Time until Substantial Completion is achieved. The Owner will pay the Architect and the Construction Manager in accordance with its agreements with each of them, and the Owner will back charge the Contractor through an appropriate Modification.

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time, provided that the

performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (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 delay will occur, and (3) is of a duration of more than one (1) day. Nothing contained in this Section 8.3.1 entitles the Contractor to compensation for damages due to hindrance or delay from any cause in the progress of the Work, unless and limited to the extent such delay is caused by the active interference of the Owner, Architect, or Construction Manager, and no claim for compensation may be made by the Contractor or paid by the Owner except to the extent caused by such active interference, and in that event further only to the extent such causation continues after the Contractor furnishes the Architect and Construction Manager with written notice of such causation. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or direction suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, will not be construed as active interference with the Contractor's performance of the Work. The extension of time provided under this Section 8.3.1 is the Contractor's exclusive remedy, except as otherwise provided and limited in the is Section 8.3.1.

§ 8.3.1.1 Extension of time, if requested in writing by the Contractor, will only be considered after the Contractor has made reasonable effort to recover the lost time.

§ 8.3.1.2 The Contractor is not entitled to receive a separate extension of time for each one of several causes of delay operating concurrently.

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

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Notwithstanding anything to the contrary in the Contract Documents, an extension of the Contract Time, to the extent permitted under Paragraph 8.3.1 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 (4) any delay-related claim (collectively referred in this subparagraph 8.3.3 as "Delay") whether or not such Delay is foreseeable. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity cost, impact damaged, labor inefficiency damages, or overhead costs.~~

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, but not later than thirty (30) days after receiving a Notice of Award following bidding, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. Each Schedule of Values forwarded to the Owner by the Construction Manager, or the



Architect shall be subject to audit and approval by the Owner in accordance with the Owner's normal audit procedures.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Application for Payment forwarded to the Owner by the Construction Manager, or the Architect shall be subject to audit and approval by the Owner in accordance with the Owner's normal audit procedures.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.1.3** Until 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 judgements against the entire amount retained from previous progress payments and less two (2) times the amount required to complete items identified in a list prepared in accordance with Paragraph 9.8.2 and the amount required to satisfy any outstanding claims, liens or judgements against the Contractor.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site only if such storage is for other than the convenience of the Contractor and not necessary to maintain the contractor's schedule and shall not increase the Contract Sum.

**§ 9.3.2.1** When payment for materials and equipment stored off site is requested by the Contractor, copies of Bills of Lading and vendor invoices shall accompany Contractor's request for payment. Procedures required by Owner shall include, but are not necessarily limited to, submission by the Contractor to the Architect or Construction Manager of bills of sale and bills of lading for such materials and equipment, provision of opportunity for Architect's or Construction Manager's visual verification and photos 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. .

**§ 9.3.2.2** All such materials and equipment, including materials and equipment stored on-site but not yet incorporated into the Work, upon which partial payments have been made shall remain the responsibility of the Contractor until incorporation into the work, including, without limitation, maintaining insurance coverage on replacement cost basis without voluntary deductible.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims,

security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

§ 9.3.2.3 All Contractors are required to submit certified payroll information to the Owner in accordance with New York State Law.

§ 9.3.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

## **§ 9.4 Certificates for Payment**

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

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

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

**§ 9.4.3** The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4** The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the

Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.5** The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

**§ 9.4.6** The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor or other Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure to comply with applicable federal, state, or local statutes, laws, rules, regulations, codes, ordinances, or other governmental requirements, including, without limitation, laws regarding provision of certified payrolls.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.



§ 9.5.5 Notwithstanding anything above to the contrary, the Owner has the right to withhold payment 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 Article 9.5.1. With respect to any Liens, claims, or other circumstances for which the Owner is entitled to withhold a sum equal to twice the stated amounts of such Liens or claims, or, where there is not stated amount, twice the amount determined by the Architect to be necessary to protect the interests of the Owner. The Owner will release payments withheld due to Liens provided that the Contractor obtains a discharge of record of such lien, by bonding or otherwise. By posting a lien discharge bond, however, the Contractor shall not be relieved of any responsibilities or obligations under the Agreement, including, without limitation, the duty to defend, indemnify, and hold harmless the Indemnitees. 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.

## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**§ 9.6.2** Payments received by the Contractor for Work properly performed by Subcontractors and suppliers will be held in trust by the Contractor for those Subcontractors or suppliers who provided labor, 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 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 and at the Owner's sole discretion. The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.2.1** Payments by the Contractor to its Subcontractors and suppliers is governed by New York State General Municipal Law Section 106-b (2). To the extent there is any conflict between that statutory section, as now in effect or as subsequently amended, and the provisions of this section 9.6.2.1, the provisions of the statute will prevail. Within seven (7) days of receipt of a payment from the Owner, the Contractor shall pay each of his Subcontractors and suppliers for work performed and/or 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 agreement with the Contractor, the Subcontractor is unable or unwilling to provide a performance bond and labor and material bond both in the full amount of the Subcontractor 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 balance of the Contract Sum. Similar provisions apply to the Subcontractors and suppliers paying each of their Sub-subcontractors and materialmen. Nothing in this section creates 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, express or implied, between any Subcontractor or supplier and the Owner (except in the event the Owner accepts an assignment under Section 5.4). The Owner 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 here 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 ~~Contractor Construction Manager~~ will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

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

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

## § 9.7 Failure of Payment

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

§ 9.7.1 ~~If the Owner is entitled to reimbursement of payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs or expenses to cure any default of the Contractor or to correct defective work, the Owner shall have the absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.~~

## § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. ~~Substantial Completion shall not be deemed to have been reached any earlier than the date the Owner receives a Certificate of Occupancy for the Project. Substantial Completion will not be certified unless the Work remaining to be completed can ordinarily be completed within thirty (30) day period. 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. This date shall be established by a Certificate of Substantial Completion issued by the Architect, signed by the Owner and Contractor, which shall state their respective responsibilities for security, maintenance, heat, utilities, and damage to the Work, and insurance. This certificate may also include a list~~

of items to be completed or corrected within thirty (30) days together with a price for each item and a time for their completion and correction. The form of the certificate will be AIA Document G734-2019, "Certificate of Substantial Completion, CMA Edition."

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.8.5.1 In conformance with New York General Municipal Law 106-b (1)(a), upon proper execution of Certificate of Substantial Completion of Work, Contractor shall submit a requisition for payment of the remaining amount of the Contract Sum. Upon certification of payment by Architect, Owner will approve and promptly pay the remaining amount of the Contract Sum less two times value of any remaining items to be completed and/or corrected and less an amount necessary to satisfy any claims, liens or judgements 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 nor any portion of retained percentage shall become due until the Contractor submits to the Architect:

1. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which Owner or Owner's property might in any way be responsible, have been paid or otherwise satisfied, the form of which will be AIA Document G706-1994, "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 AIA Document G707A-1994 "Consent of Surety to Reduction in or Partial Release of Retainage," but which will not be required if the amount withheld exceeds the amount of retainage; and
3. if required by 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 Owner.
4. If any Subcontractor, material supplier, or other party refuses to furnish a release or waiver required by the Owner, the Owner may demand that the Contractor furnish a bond satisfactory to the Owner to indemnify the Owner against a lien or claim by such Subcontractor, material supplier, or other party. The Contractor must obtain such bond within seven (7) days of such demand. If such lien or claim remains unsatisfied after payments are made, the Contractor shall

reimburse the Owner for all costs the Owner may incur in discharging or satisfying such lien or claim, including attorneys' fees.

## **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

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

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and ~~acceptance~~, and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final ~~inspection~~, and inspection and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. In the event the Architect determines the Work subject to final inspection is not complete or acceptable, any additional costs the Owner incurs for subsequent inspections by Architect will be deducted from the final payment to the Contractor. 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. If the Architect is required to perform additional final inspections because the Work fails to comply with the certifications of the Contractor, the amount of compensation paid to the Architect by the Owner for additional services shall be deducted from the final payment to the Contractor.

**§ 9.10.1.1** In addition to any other conditions or requirements contained in the Contract Documents, the Contractor is not entitled to final payment and Final Completion is not deemed to occur until all of the following occur:

1. Substantial completion as described in Section 9.8;
2. the Contractor provides to the Owner three (3) compilations of operating instructions, equipment manuals, guarantees, and warranties bound in a loose-leaf binder;
3. the Contractor provides to the Owner as-built drawings verified by the Architect to reflect the final as-built conditions;
4. the Contractor removes from the Project site any temporary facilities and equipment, including but not limited to temporary utility lines, tools and equipment;
5. the Contractor removes from the Project site materials not used, debris, and rubbish;
6. the Contractor performs all clean-up and site restoration obligations on the Project site; and

7. all other requirements contained in the Contract Documents are completed by the Contractor except for those obligations that expressly survive final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, including but not limited to: AIA G706-1994, Contractor's Affidavit of Payment of Debts and Claims; AIA G706A-1994, Contractor's Affidavit of Release of Liens; AIA G707-1994, Consent of Surety to Final Payment; and the related lien waivers and releases from the Contractor and all subcontractors and materials suppliers. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Owner has the right to demand such waiver in writing from contractor as a condition precedent to making final payment.

§ 9.10.6 The Contractor shall achieve Final Completion not later than thirty (30) days following the date of Substantial Completion. In the event the Contractor fails to achieve Final Completion with that time, the Contractor and the Contractor's surety, if any, are liable for and shall reimburse the Owner for any and all fees paid to the Architect and Construction Manager and any costs of labor or materials, and other expenses made necessary by the Contractor's failure. Additional fees and expenses will be charged by the Owner against any Final Payment due, or which becomes due to the Contractor, and the Contractor shall promptly pay or refund the Owner the excess, if any, upon the Owner's written request.

§ 9.10.7 At any time a lien is filed against the Project funds by a Subcontractor, Sub-subcontractor, supplier, lessor, or other vendor providing labor, materials, or services to the Contractor for the Project, the Owner may demand that the Contractor discharge said lien of record, through bonding or otherwise, and the Contractor must obtain the discharge of such lien within seven (7) days of such demand.



§ 9.10.8 The Contractor's warranty and correction obligations under Section 3.5 and 12.2, respectively, as well as any other warranty or correction obligations in the Contract Documents, do 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. No time periods as to any such obligations are limitations on the time within which the Owner may pursue any such cause of action, right, or remedy.

## **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 for or on behalf of the Contractor or Subcontractor, even if not directly employed by either and not directly employed by the Construction Manager.

### **§ 10.2 Safety of Persons and Property**

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

- .1 employees on the Work and other persons who may be affected thereby; it;
- .2 the Work and materials and equipment to be incorporated ~~therein,~~ into the Work, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property at the site or adjacent ~~thereto to the project site,~~ such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.
- .5 the existing buildings and premises in the vicinity of or affected by the Contractor's operations.

**§ 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, including but not limited to all infectious disease exposure precautions. The Contractor represents and warrants to the Owner that its services and compensation set forth herein contemplate compliance with all of the Owner's policies and procedures and all current and reasonably foreseeable federal, state, and local orders, regulations, and guidance related to limiting the spread of the COVID-19 virus, including but not limited to regulations and guidance from the NYS Education Department and the NYS Department of Health. Accordingly, the Contractor hereby waives any claim for an increase in compensation or a change to the Substantial Completion date due to said compliance.

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 rules and regulations promulgated under the Labor Law, place upon both the Owner and the Contractor certain duties that liability for failure to perform those duties is imposed on both the Owner and the Contractor regardless of their respective fault. The contractor agrees that, as between the Owner and Contractor, the Contractor is solely responsible for the compliance with all such laws, rules, and regulations imposed for the protection of persons performing the Contract. The Contractor, subject to any applicable limitations in Section 3.18, shall defend, indemnify, and hold harmless the Owner and Construction Manager of and from any and all liability of violation of such laws, rules and regulations, and shall defend any claims or actions that may be brought against the Owner and the Construction Manager as a result of such violations. In the event the Contractor fails or refuses to defend any such action, the Contractor is liable to the Owner and the Construction Manager for all costs of the Owner arising from such action, including the costs of defending against such action, including without limitation, attorneys' fees incurred in recovering such defense costs from the Contractor.

§ 10.2.2.2 All laborers, workers, and mechanics employed in the performance of the Work of this Project shall be certified as having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least 10 hours in duration. The Contractor and its Subcontractors shall conduct their operation in accordance with the Safety Guides for Construction, and the Contractor's safety program.

§ 10.2.2.3 All safety equipment including hard hats and weather protective gear required for the Contractor to perform its Work are to be supplied by the Contractor and/or its sSubcontractors. Within the designated construction areas, the Contractor's employees, superintendents, and/or other agents, and its Subcontractors, employees, superintendents, and/or other agents are required to wear hard hats and other required and/or essential safety equipment. Each person seen without a hard hat, or otherwise failing to comply with this requirement, will be ordered to leave the Project. No prior warnings will be given by the Owner, Construction Manager or Architect. The Contractor and its Subcontractors shall be solely responsible for making up and paying for any loss of production or required progress resulting from the removal of personnel from the Project as set forth herein including any costs incurred by the Owner in connection with the work of other contractors.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and the Contract Documents 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. The Contractor is also responsible for all measures necessary to protect any property adjacent to the Project and improvements upon such property. The cost of such measures does not serve as a basis for any increase in the Contract Sum. Any damage to adjacent property or improvements will be promptly repaired by the Contractor at its own expense.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents under Article 11) to property referred to in Sections 10.2.1.2, 10.2.1.3, and 10.2.1.4, and 10.2.1.5 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, and 10.2.1.5. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18 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 designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### **§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the such injury or damage, whether or not insured, shall must be given to the other party within a reasonable time, but in any event, not exceeding 21 days after discovery. The notice shall must provide sufficient detail to enable the other party to investigate the matter. matter and must be provided to the Architect and Construction Manager at the same time as provided to the other party. If during the construction, public or private property is damaged or destroyed as a consequence of its Work, the Contractor responsible shall, at its own expense, restore such property to a condition equal to that existing before



such damage or injury was done, by repairing, rebuilding or replacing it, or otherwise making good such damage or destruction in an acceptable manner.

### § 10.3 Hazardous Materials

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner, Construction Manager and Architect of the condition in writing.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, except to the extent any delay or additional costs result from the acts or omissions of the Contractor, its Subcontractors or of anyone else for whose acts or omissions any of them may be liable.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for injury or damages arising from the Contractor's handling, storage, use, removal and disposal of hazardous materials or substances the Contractor brings to the site, unless such materials or substances are whether required by the Contract Documents, Documents or otherwise. The Contractor must notify the Owner, Architect, and Construction Manager in writing of any hazardous materials it intends to bring to the Project site not required by the Contract Documents, including written advice as to the intended handling, storage, use, removal, and disposal of such materials, and demonstrate that its liability insurance provides coverage for any injury or damages resulting from such materials. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

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

§ 10.3.7 The Contractor covenants that material furnished contain no asbestos.

§ 10.3.8 The Contractor shall notify the Owner of any storage, use, or discovery of hazardous material on the Project site which the Contractor knows or reasonably should know could cause bodily injury or death and of any injury or death attributable to any such hazardous material.

§ 10.3.9 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.

#### **§ 10.4 Emergencies**

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.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

§ 11.1.1 **General Requirements.** The Contractor agrees to secure and maintain, at Contractor's own expense, all insurance coverage required in this Article 11 from one or more insurance companies licensed and admitted to write such insurance in New York State or that are eligible non-admitted insurers, pursuant to the current Excess Line Association of New York's official list. Insurers must carry an A.M. Best Financial Strength Rating B+ or higher. The Contractor's insurance must include the following, without limitation, and must be written with limits no less than specified in Section 11.1.2: The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

claims under workers' compensation, disability benefit, and other similar employees benefit acts applicable to the Work to be performed, including, without limitation, claims by the employees of private entities performing Work at the site that are exempt from workers' compensation insurance coverage requirements on account of number of employees or occupation, which entities must maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

1. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
2. claims for damages because of bodily injury, sickness, disease, or death of any person other than the Contractor's employees;
3. claims for damages insured by usual personal injury liability coverage sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
4. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including resulting loss of use resulting;
5. 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;
6. claims involving contractual liability applicable to the Contractor's obligations under Section 3.18; and
7. Contractor's Liability coverage shall not contain an exclusion or restriction of coverage for claims involving New York Labor Law.

§ 11.1.2 **Required Policies.** Coverages, whether written on an occurrence or claims-made basis, must be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of the any coverage required to be maintained after final payment. Claims-made coverage will only be allowed when the Contractor demonstrates that occurrence-based coverage is not available for a specific type of required coverage. The insurance required by Section 11.1.1 must be written for not less than the following limits, or greater limits as may be required by law, and include the following terms: The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**.1 Commercial General Liability.** Occurrence-based Commercial General Liability coverage to include bodily injury, person injury, and property damage applicable to ongoing operations, products and completed operations, and contractual liability, all with a per-project aggregate endorsement. No XCU exclusion is allowed for explosion, collapse, and underground operations. Products and Completed Operations coverage must be maintained in force for a minimum of one (1) year following Final Completion of the project.

(a) The coverage limits applicable shall be the greater of the amounts indicated below or the amounts carried by the Contractor:

|             |   |
|-------------|---|
| \$2,000,000 | General Aggregate                           |
| \$2,000,000 | Products and Completed Operations Aggregate |
| \$1,000,000 | Personal and Advertising injury             |
| \$1,000,000 | Each Occurrence                             |
| \$ 50,000   | Fire Damage (any one fire)                  |
| \$ 5,000    | Medical Expense (any one person)            |

If the Contractor's work on this project in any way involves the use of **unmanned aircraft**, the Contractor's General Liability policy must include for GC 24 50 06 15 or equivalent providing coverage for this project.

**.2 Automobile Liability.** Bodily injury and Property Damage coverage for the Contractor as the owner or lessee of automobiles, trucks, trailers, self-propelled Contractor's equipment, and all other owned and non-owned vehicles registered for use on the public highway and/or used in operations relating to the Contractor's Work, with a minimum Combined Single Limit of \$1,000,000. If any such vehicles are to be used to transport hazardous materials, the Contractor shall also provide pollution liability broadened coverage evidenced by ISO Form CA 99 48.

**.3 Excess Liability and/or Umbrella Liability.** Applicable to Commercial General and Automobile Liability Policies, The Excess Liability and/or Umbrella Liability coverage limits applicable shall be the greater of the amounts indicated below or the amounts carried by the Contractor:

|             |                 |
|-------------|-----------------|
| \$5,000,000 | Each Occurrence |
| \$5,000,000 | Aggregate       |

#### **.4 Workers' Compensation**

**.1 Workers' Compensation Requirements.** To comply with the New York State Workers' Compensation Law, the Contractor must (1) be legally exempt from obtaining workers' compensation insurance coverage, or (2) obtain such coverage from insurance carriers, or (3) be self-insured or participate in an authorized group self-insurance plan.

**.2 Workers' Compensation Coverage Evidence.** To demonstrate compliance with the New York State Workers' Compensation Law, the Contractor must provide **one** of the following Forms to the Owner:

**.1** Either CE-200, "Affidavit For New York entities and any Out of State entities with no employees, that New York State Workers' Compensation and /or Disability Benefits Insurance Coverage is not required"; **or** CE-200, "Affidavit that an Out-of-State or Foreign Employer working in New York State does not require specific New York State Workers' Compensation and/or Disability Benefits Insurance Coverage" (either Affidavit must be stamped as received by the New York State Workers' Compensation Board); **or**

**.2** Either C-105.2, "Certificate of NYS Workers' Compensation Insurance Coverage" (for employers insured for workers' compensation through a private insurance carrier - the Contractor's insurance carrier must send this form to the Owner), **or** U-26.3, "New York State Insurance Fund Certificate of Workers' Compensation Coverage" (for Employers insured for workers' compensation through the State Insurance Fund); **or**

**.3** Either SI-12, "Certificate of Workers' Compensation Self Insurance," **or** GSI-105-2, "Certificate of Participation in Workers' Compensation Group Self-Insurance (for Employers participating in group self-insurance for workers' compensation - the Contractor's Group Self-Insurance Administrator must send this form to the Owner).

#### **.5 Employer's Liability/Disability**

**.1 Disability Benefits Requirements.** To comply with the New York State Disability Benefits

Law, the Contractor must (1) be legally exempt from obtaining disability benefits insurance Coverage, (2) obtain such coverage from insurance carriers, or (3) be self-insured.

**.2 Disability Benefits Coverage Evidence.** To demonstrate compliance with New York State Disability Benefits Law, the Contractor must provide **one** of the following forms to the Owner:

**.1 Either** CE-200, "Affidavit for New York entities and any Out-of-State entities with No employees, that New York State Worker' Compensation and /or Disability Benefits Insurance coverage is not required" or CE-200, "Affidavit that an Out-of-State or Foreign Employer working in New York State does not require specific New York State Workers' Compensation and/or Disability Benefits Insurance Coverage" (either Affidavit must be stamped as received by the New York State Workers' Compensation Board); **or**

**.2 Either** DB-120.1, "Certificate of Disability Benefits," **or** DB-820/829, "Certificate/ Cancellation of insurance" (the Contractor's insurance carrier must send either form to The Owner); **or**

**.3** DB-155 (3/04), "Certificate of Disability Benefits Self-Insurance."

**.6 Hazardous Materials.** If the Contractor's Work involves handling or disturbance of asbestos or other hazardous materials, the Contractor shall provide bodily injury and property damage liability insurance applicable to such operations, covering both ongoing operations and products & completed operations. Products and Completed Operations coverage must be maintained in force for a minimum of one (1) year following Final Completion of the Project. Coverage must be for limits not less than:

**.1** If covered by the Contractor' umbrella/excess liability policy:

\$1,000,000 General Aggregate

\$1,000,000 Each Occurrence or Incident:

**.2** If not covered by the Contractor's umbrella/excess liability policy:

\$6,000,000 General Aggregate

\$6,000,000 Each Occurrence or Incident:

**.7 Owner's and Contractor's Protective Liability Policy.** The XCU exclusion must be deleted, and Cazenovia Central School District the Owner shall be the named insured under the policy Named Insureds will be "Owner name". Minimum limits are:

\$2,000,000 Each Occurrence

\$4,000,000 Aggregate

**§ 11.1.3 Certificates of Insurance and Copies of Policies.** Certificates of insurance acceptable to the Owner, together with copies of all insurance policies procured by the Contractor pursuant to this Article 11, including, without limitation, terms, conditions, declarations, riders, and endorsements, must be submitted to the Construction Manager for transmittal to the Owner, with copies to the Architect, prior to commencement of the Work. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage must be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage must be furnished by the Contractor with reasonable promptness. In addition to the Certificates of Insurance and accompanying document, the Contractor shall provide to the Certificate Holders, on a timely basis, copies of any subsequently issued endorsements that amend any coverages or limits. In addition:

**.1** "Certificate Holder" is the Cazenovia Central School District Owner

**.2** Coverages reflected in certificates of insurance and underlying policies must comply with all requirements of this Article 11.

**.3** All insurance documents must be executed with *authorized* signatures.

**.4** All required liability policies must be endorsed to provide that any Notice of Cancellation or Notice of Non-Renewal given to the First Named Insured must also be given to the Additional Insureds identified in Section 11.1.4. **Copies of such endorsements must be furnished to the Certificate Holders.**

**.5** Failure of the Owner to object to the Contractor's failure to furnish a certificate or other evidence of required insurance coverages, or to object to any defect in such certificate or other evidence, or to demand receipt of such certificate or other evidence, is not a waiver of the Contractor's obligation to

furnish the required insurance coverages. Furthermore, nothing contained in this Article 11 imposes on the Owner a duty or obligation to review any certificates or other evidence of insurance coverages or to issue any formal approval or acceptance of such evidence, the duty and obligation of the Contractor being to provide insurance meeting the requirements of this Article 11 regardless of any review or lack of review by the Owner of the Contractor's evidence of insurance.

.6 The Contractor's liability to and indemnification of the Owner is not relieved or diminished by the Contractor securing insurance coverage in accordance with this Article 11. Any acknowledgement of receipt of, or lack of objection by the Owner to, the Contractor's evidence of required insurance coverage is not acceptance in any way of any deficiencies in the Contractor's insurance coverage.

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

#### **§ 11.1.4 Additional Insureds**

§ 11.1.4.1 Policies of insurance required under Sections 11.1.2.1 (Commercial General Liability), 11.1.2.2 (Automobile Liability), 11.1.2.3 (Excess Liability and/or Umbrella Liability), and 11.1.2.6 (Hazardous Materials – if applicable) must also apply to the following as Additional Insureds on a primary and non-contributory basis, with the following designation, unaltered:

The Owner and their respective employees, interim administrators, authorized volunteers, committee members, student teachers, auxiliary instructors, members of the Board of Education, and consultants (the "District Indemnitees"); Architect and/or Engineer and its consultants ("Designers"), and Campus Construction Management Group, Inc. ("Construction Manager"), during both ongoing and completed operations. The additional insured coverage provided shall not preclude coverage in favor of the any District Indemnitees, Designers, or Construction Manager, based on its lack of privity with Contractor of other third-party additional insured. Further, such coverage shall not exclude or deny coverage to District Indemnitees, Designers, or the Construction Manager on the basis that the named insured Contractor's Work or operations are not performed directly for the District Indemnitees, Designers, or Construction Manager or other third-party additional insured.

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

§ 11.1.4.2 Coverage Evidence. Additional Insured coverage must be affected through the use of either ISO Form CG 20 10 11 85 or Forms CG 20 10 04 13 and CG 20 37 04 13 together. Form CG 20 10 04 13 alone is not acceptable. Certificates of Insurance must clearly state how coverage is affected in the Excess/Umbrella Liability layer. Certificate of Insurance must show the form numbers used to affect all the Additional Insured coverages. A copy of the actual policy language or endorsement that effects this coverage in each policy must be provided to the Owner and the Construction Manager with the Certificate of Insurance.

§ 11.1.4.3 No Reliance on "Following Form." The Contractor acknowledges that "Following Form" wording generally does not meet the primary and non-contributory coverage requirement for Additional Insureds, and that the coverage primacy aspect of Additional Insured coverage is typically addressed in the "Other Insurance" provisions of a policy's "Conditions" section, and often requires an amending endorsement to effect coverage on a primary and non-contributory basis. The Contractor therefore must provide such endorsements to the Owner, or other documentation acceptable to the Owner evidencing that the primary and non-contributory coverage requirements are met as to all policies for which they are required under Section 11.4.1.1.

§ 11.1.5 Normal Expiration/Renewal. When any required insurance is to expire due to a normal expiration or renewal date, the Contractor shall supply the Owner, at least thirty (30) days prior to either such date, in addition to Certificates of Insurance, with either (1) copies of all renewed insurance policies, including, without limitation, terms, conditions, declarations, riders, and endorsements evidencing continuation of all coverages in the same manner, limits of protection, and scopes of coverage as was provided by the previous policy, or (2) if acceptable to



the Owner, all declaration pages, mandatory riders, and/or endorsements that clearly evidence the continuation of all coverages in the same manner, limits of protection, and scope of coverage as provided by the previous policy.

**§ 11.1.6 Subcontractors.** The Contractor shall cause each Subcontractor to (1) procure insurance reasonably satisfactory to the Owner and written by companies meeting the same criteria as required under Section 11.1.1, and (2) cause the issuers of those insurance policies to name the Additional Insureds as Additional Insureds under each Subcontractor's comprehensive general, automobile, excess/umbrella, and hazardous materials liability policies. The Additional Insured endorsement included in each such Subcontractor's policies must state that coverage is afforded to all Additional Insureds with respect to any and all claims arising out of operations performed by or on behalf of the Contractor. If the Additional Insureds have other insurance otherwise applicable to a loss, such other insurance will only apply, if at all, on an excess or contingent basis. The amount of each Subcontractor's insurers' liability under each such insurance policy will not be reduced by the existence of such other insurance.

**§ 11.1.7 Owner Insurer Loss Payments.** In the event the Owner's insurer(s) make(s) any payment toward any loss covered under any policy of insurance the Contractor is required to procure under this Article 11, the Owner's insurer(s) are subrogated to all of the Contractor's rights of recovery against any person or organization including, but not limited to, the Contractor's insurer(s), and the Contractor shall execute and deliver all instruments, papers, and whatever else is necessary to secure those rights. The Contractor shall do nothing after the payment of any damages to prejudice those rights.

## **§ 11.2 Owner's Insurance Liability Insurance**

**§ 11.2.1** The Owner shall purchase and maintain the Owner's usual insurance of the types and limits of liability, The Owner may also, at its sole option, purchase and maintain other insurance for protection against claims that may arise from operations under the Contract Documents. The Contractor is not responsible for purchasing and maintaining such optional Owner's liability insurance unless specifically required in the Contract Documents. Neither the Owner's usual liability insurance nor any other insurance obtained by the Owner reduces or otherwise affects the Contractor's insurance requirements under Section 11.1 containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Property Insurance Waivers of Subrogation**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of New York, property insurance on a replacement cost basis. Such property insurance will be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment is made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance will include interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project.

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.1.1** Property insurance will be on a builder's risk, "all risk," or equivalent policy form and include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings, and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and will cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss. Coverage for other perils is not required unless otherwise provided in the Contract Documents.

**§ 11.3.1.2** Contractor is responsible for all tools, equipment, materials, Work, etc., until Substantial Completion and possession by Owner. Contractor shall provide insurance for theft as he may require for himself, his subcontractors, and his employees' protection. The insurance coverage referred to in this subparagraph shall be in accordance with a standard Builder's Risk Policy used in the State of New York.

**§ 11.3.1.3** The Contractor shall provide insurance coverage for portions of the Work stored off the site, in transit and stored on the site but not incorporated into the Work as full replacement cost basis without voluntary deductible. The Contractor shall provide Certificate copies to the Construction Manager showing the coverage for their materials in transit or stored off site.

**§ 11.3.1.4** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.3.1.5** The property insurance will cover portions of the Work stored off the site, and also portions of the Work in transit. The insurance required by this Section 11.3 will not, however, cover machinery, tools, equipment, vehicles, shanties, tool houses, trailers, or other temporary or permanent structures owned or rented by the Contractor, a Subcontractor, or a Sub-subcontractor, or their employees, utilized in performance of the Work but not incorporated into the permanent improvements. The Contractor is solely responsible for all such items of its own and any under its control. The Contractor shall, at the Contractor's own expense, provide insurance coverage for all of the items described in this Section 11.3.1.4, which is subject to the provisions of Section 11.3.7.

**§ 11.3.1.6** 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.

~~§ 11.3.1.7 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.~~

~~§ 11.3.1.8 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 NOT USED. Not used.~~

~~§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~§ 11.3.4 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 NOT USED. Not used.~~

~~§ 11.3.6 NOT USED. Not used.~~

~~§ 11.3.7 Waivers of Subrogation. The Owner and Contractor waives all rights against (1) the Owner each other and any of its their respective subcontractors, sub-subcontractors, agents and employees, and (2) the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their respective subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other causes of loss to the extent of proceeds under property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and any of their respective subcontractors, sub-subcontractors, agents, and employees, by appropriate written agreements, similar waivers each in favor of other parties enumerated in this Section 11.3.7. The policies must provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.~~

~~§ 11.3.8 A loss insured under the Owner's property insurance will be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate written agreements shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.~~

~~§ 11.3.9 If required in writing by a party in interest, the Owner shall, upon occurrence of an insured loss, give a bond for proper performance of the Owner's duties. The cost of the bond will be charged against proceeds received. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement. If after such loss no other special agreement is made, and unless the~~

Owner terminates the Contract for convenience, replacement of damaged property will be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner will adjust and settle a loss with insurers unless one of the parties in interest objects in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute will be resolved in the manner selected as the method of binding dispute resolution in the Agreement. Nothing in this Agreement calls for the name of any party other than the Owner as loss payee on the Owner's insurance and no draft or other instrument in payment of any loss will name any other party as a joint payee.

§ 11.3.11 The Contractor's Insurance Company shall acknowledge in writing to the Construction Manager that they have read and will comply with all requirements under Indemnification Section 3.18 of the General Conditions.

#### **§ 11.4 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 or companies satisfactory to the Owner, licensed to do business in the State of New York, and listed in the latest issue of U.S. Treasury Circular 570. The amount of each bond will be equal to one hundred (100) percent of the Contract Sum. Each bond must be maintained throughout the duration of the Project, and subsequently to the extent the Contractor has ongoing performance and payment obligations following completion of the Project.

§ 11.4.2 Bonds must be prepared on the forms of AIA Documents A312-2010 - Performance Bond and A312-2010 - Payment Bond, with the modifications stated hereinout modifications other than (1) a mandatory statement in Section 16 of the Performance Bond that it is given as a statutory or other legally required bond and that Section 13 of the Performance Bond applies in full, without exception, (2) a mandatory statement in Section 16 of the Performance Bond that it includes performance by the Contractor of any correction and warranty obligations in the Contract Documents, including such performance after the dates of Substantial and Final Completion, and (3) a mandatory statement in Section 18 of the Payment Bond that it is given as a statutory or other legally required bond and that Section 14 of the Payment Bond applies in full, without exception. The cost of the bonds is included in and will not increase the Contract Sum.

- .1 The Contractor shall deliver the required bonds to the Owner not later than 7 days following the date the Agreement is entered into and before commencing any of the Work.
- .2 The Contractor shall require any attorney-in-fact who executes the required bonds on behalf of the surety to affix to the bonds a certified and current copy of their power of attorney authorizing him or her to sign the bond.
- .3 The bonds must specifically name the Owner as Obligee.

§11.4.3 Both bonds shall be made out to the Owner, prepared on a modified AIA Form A312-2010 and submitted by the Contractor to the Owner within ten (10) days of notification that its Bid was accepted.

**The Performance Bond shall contain the following modification in §16:**

Surety hereby waives notice of and consents to any addition, alteration, omission, change, extension of time, or other modification of the Construction Contract. Such addition, alteration, omission, change, extension of time, or other modification of the Construction Contract, or forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety from its obligations hereunder. Surety further agrees that it is obligated under this bond to any successor, grantee, or assignee of the Owner.

Surety agrees that in the event of a default by the Owner in the performance of the Owner's obligations to the Contractor under the Construction Contract, the Contractor or Surety shall provide written notice of default 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 the default is such that it can't be cured within thirty (30) days.

Notwithstanding anything to the contrary contained in the Construction Contract between the Contractor and the Owner or herein, no meeting among Owner, Contractor, and Surety, or any combination thereof, is required as a pre-condition to Owner declaring Contractor in default or prior to Owner terminating the Construction Contract with Contractor. Any such requirements contained herein are waived by the Contractor and the Surety and are unenforceable against the Owner.

This Bond includes performance by the Contractor of any correction and/or warranty obligations contained in the Construction Contract, including such performance after the date of Substantial or Final Completion.

This Bond is given as a statutory bond or as required by the Construction Contract and section 13 applies without exception.

**The Payment Bond shall contain the following modification in §18:**

Surety hereby waives notice of and consents to any addition, alteration, omission, change, extension of time, or other modification of the Construction Contract. Such addition, alteration, omission, change, extension of time, or other modification of the Construction Contract, or forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety from its obligations hereunder. Surety further agrees that it is obligated under this bond to any successor, grantee, or assignee of the Owner.

Surety agrees that in the event of a default by the Owner in the performance of the Owner's obligations to the Contractor under the Construction Contract, the Contractor or Surety shall provide written notice of default 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 the default is such that it can't be cured within thirty (30) days.

This Bond is given as a statutory bond or as required by the Construction Contract and section 14 applies without exception.

**§11.4.4** The Surety thereon must be such Surety company or companies as are authorized and licensed to transact business in the State of New York and included on the Department of the Treasury's Listing of Approved Sureties with an underwriting limit of at least \$2,000,000 or the amount of the bond, whichever is higher. Each bond must be properly signed with acknowledgment of the signatures. Attorneys-in-fact who sign bonds must file with each bond a certified copy of their power of attorney to sign said bonds. Every bond must display the Surety's Bond Number.

**§11.4.5** The Performance Bond shall be maintained in full force and effect for a period of two (2) years after the date of the Contractor's acceptance of final payment as guarantee that the Contractor will make good any faults or defects in the Work arising from improper or defective workmanship or materials which may appear during the period.

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

§11.4.7 Additional performance and payment bonds may be required by the Owner, in the Owner's discretion, from any Subcontractor whose Subcontract exceeds One Hundred Thousand Dollars (\$100,000.00). The Owner shall pay for any premiums charged for obtaining required Subcontractor bonds by executing a Change Order which shall increase the Contract Sum in an amount equal to such premiums. All such bonds shall be in form and substance satisfactory to the Owner in the Owner's sole judgment.

§ 11.4.8 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract or performance under the Contract Documents, the Contractor shall promptly furnish a copy of the bonds and hereby authorizes the Owner to furnish a copy of the bonds.

§ 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.

#### § 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

#### § 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work is covered that the Construction Manager or Architect did not specifically request to observe prior to its being covered, the Construction Manager or Architect may request to see such Work and it will be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement will, 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 will 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 is responsible for payment of such costs.

If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## **§ 12.2 Correction of Work**

### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, 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 by the rejection, will be at the Contractor's expense. The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

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

**§ 12.2.2.1** In addition to the contractor's obligations under Section 3.5, if, within two one (21) year after the date of Substantial Completion of the Work or a designated portion of the Work, or the date of acceptance of a portion of the Work that is subject to correction or completion after the date of Substantial Completion of the Work, whichever is later, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner previously gave the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one (1)-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the right to require correction by the Contractor and to make a claim for breach of this Section 12.2.2. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one (1) year period will be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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

**§ 12.2.2.3** The one (1) year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.



**§ 12.2.3** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner, separate contractors, or other Multiple Prime Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents, or in consequence of work performed in fulfilling warranties or guarantees. The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

**§ 12.2.5** Nothing contained in this Section 12.2.2 establishes a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one (1) 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.

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

**§ 12.2.6** If the Contractor fails to correct nonconforming Work within a reasonable time, not to exceed ~~forty-five (fifteen (45) 15~~ days from the date the Contractor received written notice from the Owner per subparagraph 12.2.2, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect issued through the Construction Manager, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner, and the Owner shall be permitted to instruct the bonding company to reimburse or pay any amount remaining unpaid to the extent the Contractor has not paid the difference to the Owner within the ten-day period described above. The obligations of the Contractor under the terms and provisions of the Contract Documents shall not, however, be limited to the amount of any surety bond provided by the Contractor.

### **§ 12.3 Acceptance of Nonconforming Work**

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

**§ 12.3.1.** For this Section 12.3 to apply, the Owner must accept non-conforming Work in writing, specifying the non-conforming Work being accepted. Notwithstanding any acceptance of Work by the Owner, not initially deemed non-conforming, if the Owner subsequently discovers that such Work is non-conforming, the Owner, at its sole option, may either expressly accept such Work in writing, or demand that the Contractor correct such Work under Article 12.

**§ 12.3.2** If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Architect's and Construction Manager's recommendation of final payment) prefers Owner (and, prior to Architect's recommendation of final payment, also Architects) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such defective

Work (such costs to be approved by Architect as to reasonableness). If any such acceptance occurs prior to Architect's and Construction Manager's recommendation prior to Architect's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

~~The Contract is governed by the laws of the State of New York, excluding principles of conflicts of law. The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

### § 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, acknowledgments, representations, and all other and obligations contained in the Contract Documents. Except as provided in ~~Article 13-Section 13.2.2~~, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

~~§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.~~

### § 13.3 Rights and Remedies

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

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

§ 13.3.3 Written notice is deemed duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it is intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and will 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 and (2) tests, inspections, or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor. ~~or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~

§ 13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures.



Costs of such additional testing, inspection, or approval, except as provided in Section 13.6, will be at the Owner's expense. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, must 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 must shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.4.7** Any materials 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 workmanship do not conform to the Specification requirements.

**§ 13.4.8** Test specimens will be submitted to an independent laboratory designated by the Architect. Test data will be furnished to the Contractor by the Architect.

### **§ 13.5 Interest**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate NY New York Statutory Rate applicable to the obligations of School Districts. the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### **§ 13.6 Time Limits on Claims**

**§ 13.6.1** As between the Owner and Contractor:

- .1 Before Substantial Completion.** As to acts or failures to act occurring prior to the date of Substantial Completion of all of the Work, any applicable statute of limitations commences to run and any alleged cause of action accrues in any and all events on the date of Substantial Completion;
- .2 Between Substantial Completion and the Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the date of Substantial Completion of all of the Work and prior to issuance of the final Certificate for Payment, any applicable statute of limitations commences to run and any alleged cause of action accrues in any and all events on the date of issuance of the final Certificate for Payment; and
- .3 After the Final Certificate for Payment.** As to acts or failures to act occurring after the date of issuance of the final Certificate for Payment, any applicable statute of limitations commences to run and any alleged cause of action accrues in any and all events on the date of any act or failure to act by the Contractor pursuant to any warranty provided under Section 3.5, or on the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or on the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner.

**§ 13.6.2** Nothing contained in Section 13.6.7 relieves the Contractor from any time limitations or notice requirements set forth in Article 15 or as provided in New York State Education Law Section 3618 as conditions precedent to instituting any proceeding for binding dispute resolution.

**§ 13.7 No Oral Modification or Constructive Changes** The provisions of the Contract Documents may not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by the Owner and Contractor. No person or entity, including the Architect and Construction Manager, 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 is limited to the specific matters stated in the writing signed by the Owner and Contractor and does not relieve the Contractor of any other duties and obligations under the Contract Documents. No "constructive" changes are allowed.

**§ 13.9 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.

**§ 13.10 Storage Facilities.** The Contractor is responsible for providing storage facilities approved by the Owner for materials and equipment for which payment is received by the Contractor from the Owner, and which is stored off or on the Project site and not yet incorporated into the Work. Such material and equipment must be covered by the Contractor's insurance, identified as property of the Owner, and the Owner has the right to periodic inspection. In addition, materials and equipment stored off-site must be secured in locked enclosures within storage facilities separate from non-Project materials and equipment and must remain in storage until ready for use on the Project. Copies of bills of lading and vendor invoices for such materials and equipment must accompany the Contractor's Applications for Payment.

**§ 13.11 Equal Opportunity and Anti-Discrimination**

**§ 13.11.1** The Contractor, Subcontractors, and Sub-Subcontractors shall not discriminate against or intimidate any applicant for employment or employee because of age, race, national origin, color, creed, religion, sex, sexual orientation, marital status, non-disqualifying disability, or other legally protected characteristic (collectively "Protected Characteristics"). The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to Protected Characteristics, including actions related to, without limitation, employment, promotion, demotion, transfer; recruitment, recruitment advertising; layoff, termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**§ 13.11.2** The Contractor, Subcontractors, and Sub-subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to Protected Characteristics.

**§ 13.11.3** 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.

**§ 13.11.4** There may be deducted from amounts otherwise payable to the Contractor by the Owner a penalty in the form of a statutory monetary fine for each person for each calendar day during which such person is discriminated against or intimidated in violation of this Section 13.11 and applicable law.

**§ 13.11.5** The Contract may be terminated by the Owner and all monies due or to become due the Contractor may be forfeited for a second or any subsequent violation of the terms or conditions of this Section 13.11.

**§ 13.12 New York State Labor Law Requirements**

**§ 13.12.1 General**

The Contractor shall comply with all applicable provisions of the New York Labor Law ("Labor Law"), including, without limitation, the requirements under the specific provisions cited in this Section 13.12.

**§ 13.12.2 Working Hours**

**§ 13.12.2.1** The Contractor specifically agrees as required by Labor Law Sections 220 and 220-d, as amended, that no laborer, worker, or mechanic in the employ of the Contractor, Subcontractors, Sub-subcontractors, or other persons or entities doing or contracting to do the whole or any part of the Work, will be permitted or required to work more than eight (8) 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.

**§ 13.12.3 Wage Rates**

§ 13.12.3.1 The wages paid to each laborer, worker, or mechanic in the employ of the Contractor, Subcontractors, Sub-subcontractors, or other persons or entities doing or contracting to do all or any part of the Work for a legal day's work will not be less than the prevailing rate of wages as defined by the Labor Law and as issued by the State of New York Department of Labor for the location and duration of the Project. No change in such prevailing rates during the duration of the Project will form the basis for a change in the Contract Sum.

§ 13.12.3.2 Each laborer, workman, or mechanic employed by the Contractor, Subcontractors, Sub-subcontractors, or other persons or entities doing or contracting to do all or any part of the Work will be provided the supplements required by Article 8 of the Labor Law.

§ 13.12.3.3 The Contractor, Subcontractors, and Sub-subcontractors shall comply with all requirements of Labor Law Section 220-a, as amended, regarding mandatory submission of certified payroll records, which must be included with each Application for Payment and which are a condition precedent to the Owner's payment of any sums due and owing to the Contractor with respect to the Project.

§ 13.12.3.4 The Contractor specifically agrees, as provided by the Labor Law, that the Contract may be forfeited and no sum paid for any work done under it 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.

#### **§ 13.13 CONTRACT DEEMED EXECUTORY**

The Contractor agrees that the Contract shall be deemed executory to the extent of the monies available and that no liability shall be incurred by the Owner beyond the monies available therefor.

### **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3** The Construction Manager does not certify an Application for Payment, or the Architect does not issue a Certificate for Payment and does not notify the Contractor of the reason for withholding certification as provided in Sections 9.4 and 9.5, or because the Owner does not make payment on a Certificate for Payment within the time stated in the Contract Documents. However, the Contractor, following the thirty-day stoppage and as a condition precedent to termination under this Section 14.1.1.3, must notify the Owner, Architect, and Construction Manager of occurrence of any of the foregoing events as to certification or payment as a basis for termination, in writing, and its intent to terminate the Contract as a result seven (7) days following receipt of such notice by the Owner if there is no cure of the occurrence within that seven (7) day period. Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2. Not Used.

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** Subject to Section 14.1.5, The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, the agents or employees of any of them, or any other persons or entities performing portions of the Work under direct or indirect contracts with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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

**§ 14.1.3** Subject to Section 14.1.5, If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, Construction Manager, and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit and direct costs incurred by reason of such termination, but Contractor shall make no Claim nor seek to recover overhead lost anticipated profit or damages in contract for Work not performed by Contractor.

~~If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~

**§ 14.1.4** Subject to Section 14.1.5, If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, the agents or employees of any of them, or any other persons performing portions of the Work under contracts with the Contractor because the Owner repeatedly fails to fulfill the Owner's obligations under the Contract Documents with respect to material matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager, and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~

**§ 14.1.5** Any delay, suspension, or interruption under Sections 14.1.1 through 14.1.4 hereof shall not constitute grounds for the Contractor's termination of this Agreement or for additional compensation or payments so long as delay, interruption, or suspension of the Project is caused by or arises out of acts of God, weather, earth movement, lockout or labor trouble, unforeseen restrictive governmental laws, regulations, recommendations, acts or omissions, executive orders, acts or directives of public officials or authorities, public declarations of emergency, epidemics, or acts of war or terrorism which directly or indirectly affect the Project and/or the facilities and services of the Owner, without fault and beyond the reasonable control of the Owner (each, a "Force Majeure Event").

## **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;  
~~—fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;~~
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 is substantially behind schedule as determined by the Architect, Construction Manager and Owner;
- .6 breaches any warranty made by the Contractor under or pursuant to the Contract Documents; or
- .7 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the work in compliance with all the requirements of the Contract Documents; or
- .8 repeatedly disregards applicable present and future federal, state, and local government orders,

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor ~~will~~ 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 by the Owner's termination of the Contract, and other damages incurred by the Owner and not expressly waived, such excess will 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, will, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment will survive termination of the Contract.

~~If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.~~

#### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

#### § 14.4 Termination by the Owner for Convenience

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

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

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

.4 complete performance of the Work required under portions of the Contract not terminated, if any.



**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor is entitled to receive payment for Work executed, for direct costs incurred by reason of such termination and for proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages on the Work performed to the date of termination; but Contractor shall make no Claim nor seek to recover overhead, lost anticipated profit or damages in contract for Work not performed by Contractor. The Contractor waives all other claims for payment and damages, including, without limitation, claims for consequential damages, including lost profits, arising from termination for the Owner's convenience.

the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

**§ 15.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

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

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

### **§ 15.1.3 Notice of Claims**

### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by the either the Owner or Contractor must be initiated by written notice to the Owner other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor Claimant first recognizes the condition giving rise to the Claim, whichever is later.

Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

- .1 The Contractor may submit a Claim concerning a matter properly noticed in accordance with the time requirements of this Contract set forth in Section 15.1.2 and elsewhere;
- .2 Failure by the Contractor to furnish the required Claim documentation within the time set forth above shall constitute waiver of the Contractor's right to compensation for such Claim.
- .3 Contractor shall furnish three (3) certified copies of the required Claim documentation, with a copy submitted to the Owner, Architect, and Construction Manager. The Claim documentation shall be complete when furnished. The evaluation of the Contractor's Claim will be based, among other things, upon the Owner's Project Records and the Contractor's furnished Claim documentation.

- .4 Claim documentation shall conform to Generally Accepted Accounting Principles and shall be in the following format:
- a. general introduction;
  - b. general background discussion
  - c. issues
    - i. index of issues (listed numerically);
    - ii. for each issue:
      - (1) background
      - (2) chronology
      - (3) Contractor's position (reason for Owner's potential liability)
      - (4) supporting documentation of merit or entitlement
      - (5) supporting documentation of damages
      - (6) begin each issue on a new page
  - d. all critical path method schedules (as-planned, monthly updates, schedule revisions and as-built), along with computer disks of all schedules related to the Claim;
  - e. productivity exhibits (if appropriate); and
  - f. summary of issues and damages.
- .5 Supporting documentation of merit for each issue shall be cited by reference, photocopies or explanation. Supporting documentation may include, but shall not be limited to General Conditions, General Requirements, technical specifications, drawings, correspondence, conference notes, Shop Drawings and submittals, shop drawing logs, survey books, inspection reports, delivery schedules, test reports, daily reports, subcontracts, fragmentary CPM schedules or time impact analyses, photographs, technical reports, requests for information, field instructions and all other related records necessary to support the Contractor's claim.
- .6 Supporting documentation of damages for each issue shall be cited, photocopied or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the bid; certified, detailed labor records including labor distribution reports; material and equipment procurement records; construction equipment ownership, cost records or rental records; subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records, and any other accounting material necessary to support the Contractor's Claims.
- .7 Each copy of the Claim documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of these Contract Documents.

§ 15.1.3.2 All written claims for damages or extra work shall include time of occurrence, location and other identifying factors and shall be supported if so required by Architect, by letters, journals, or diaries, instructions, vouchers, or other pertinent or applicable records

§ 15.1.3.3 Owner shall not be liable to any Contractor or Subcontractor for damages caused by any breach of Contract, delay in performance or other act of neglect by other Contractors or Subcontractors having Contracts for performance of any portion of work.

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

#### **§ 15.1.4 Continuing Contract Performance**

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

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



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

§ 15.1.5 **Claims for Additional Cost.** If the Contractor intends to make a Claim for an increase in the Contract Sum, written notice must be given before proceeding to execute any work that may be the basis for the Claim. However, such work must proceed following the Contractor giving that notice. The basis for a Claim for additional cost may include, but is not limited to, (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, or (6) a Construction Change Directive not executed by the Contractor. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Each written Claim for Additional Cost must include specific information setting forth the circumstances giving rise to the Claim, and must be supported, if so required by the Architect, by letters, journals, diaries, instructions, vouchers, or other pertinent or applicable records. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3. ~~If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.~~

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor intends to make a Claim for an increase in the Contract Time, written notice must be given specifying the additional time needed, and the reasons why needed. The Contractor's Claim must include an estimate of cost and of probable effect of delay on progress of the Work. Each written claim for Additional Time must be supported, if so required by the Architect, by letters, journals, diaries, instructions, vouchers, or other pertinent or applicable records. To the extent the Contractor seeks an increase in the Contract Sum in connection with a Claim for an increase in the Contract Time, the Contractor must also comply with the provisions of Section 15.1.4. A new Claim for an increase in the Contract Time is necessary in the event of a continuing delay beyond the additional time previously claimed as needed.

~~If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.~~

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

§ 15.1.7 **Waiver of Claims for Consequential Damages.** The Contractor waives Claims against the Owner for consequential damages arising out of or relating to the Contract. This waiver includes damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit. This waiver is applicable, without limitation, to all consequential damages due to termination of the Contractor in accordance with Article 14. ~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~  
~~.1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~  
~~.2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

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

#### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, must be referred to the Initial Decision Maker for an initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, a written claim

made in accordance with this Article and an initial decision are required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days pass after the Claim is referred to the Initial Decision Maker with no decision being rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

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

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

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

### § 15.3 Mediation

The parties hereto at the time any claim or dispute arises between them may, in their sole personal discretion, agree to submit the same to non-bonding mediation upon such terms and conditions as may be agreed at the time; but the decision to do so must be unanimous between them and must be in writing in advance thereof. The request for mediation is not deemed a condition precedent to any other right or remedy of the aggrieved party, all of which rights and remedies are expressly reserved by the parties.

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of this Agreement. However, the American Arbitration Association will not be involved in the mediation unless the parties mutually agree. A request for mediation shall be made in writing, delivered to the other party to the Contract. The parties shall select a mutually acceptable mediator. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

~~Mediation will be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation must be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation will proceed in advance of binding dispute resolution proceedings, which will be stayed pending completion of mediation. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

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

~~§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation will be held in the place where the Project is located. Agreements reached in mediation are enforceable as settlement agreements in any court with proper jurisdiction.~~

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

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

### § 15.4 Litigation

If for any reason the Claim or dispute is not resolved by the mediation or the parties fail to agree on mediation as a dispute resolution process, then the Claim or dispute shall be resolved in New York State Supreme Court in the County where the Project is located. The Owner shall be entitled to recover its reasonable attorney's fees and costs if it prevails in the litigation. The Owner and the Contractor consent to exclusive jurisdiction of the New York State Supreme Court with jurisdiction over the County in which the Project is located and waive any and all objections to the jurisdiction of such court.

## **§15.5 SAVING CLAUSE**

If, during the term of this Contract, it is found that a specific clause of the Contract is illegal under Federal or State law, the remainder of the Contract not affected by such a ruling shall remain in full force and effect.

## **§ 15.4 Arbitration**

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

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

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

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

## **§ 15.4.4 Consolidation or Joinder**

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

**§ 15.4.4.2** Either party, at its sole discretion, may demand joinder of persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, and who are under contract with that party with respect to the Project under agreements containing arbitration provisions that do not prohibit such joinder. Any other persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration may be joined by their consent in writing to such joinder. Consent to arbitration involving an additional person or entity does not constitute consent by that additional person or entity to arbitration of any claim, dispute or other matter in question not described in the written consent.

Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

## **ARTICLE 16 CONFORMANCE TO THE LAWS OF THE STATE OF NEW YORK**

§ 16.1 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, Education Law, State Finance 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 prevail and the conflicting provisions in the Contract Documents are deemed to conform to the statutory provisions.

§ 16.2 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 or elsewhere in the Contract Documents, such terms are deemed incorporated into these General Conditions.

### **§ 16.3 MINIMUM RATE OF WAGE AND SUPPLEMENT**

- 16.3.1 The minimum hourly wage rates (including supplements) to be paid shall not be less than that designated by the New York State Department of Labor, Bureau of Public Works and any redetermination of the prevailing rate of wages after the Contract is approved shall be deemed to be incorporated Herein by reference as of the effective date of redetermination and shall form a part of these Contract Documents.
- 16.3.2 The minimum hourly supplement to be paid shall be in accordance with the prevailing practices in the locality where the work is located and shall be not less than that designated by the Industrial Commissioner. Supplements as defined in Section 220 of the Labor Law, as amended, means all remuneration for employees paid in any medium other than cash or reimbursements for expenses or any payments which are not wages within the meaning of the law, including, but not limited to, health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay and life insurance.
- 16.3.3 The Contract shall be forfeited by a Contractor and he shall not be entitled to receive any sum of money for any work performed hereunder on his or her second conviction for willfully paying less than the stipulated wage scale (including supplements) as provided in the Labor Law, Section 220, as amended, or the stipulated minimum hourly wage scale (including supplements) as provided in the Labor Law, Section 220-d, as amended.

### **§ 16.4 APPRENTICES**

Where required by law apprentices must be registered, individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his or her work force on any job under the registered program. Any employee, who is not registered as above, shall be paid the prevailing wage rate for the classification of work he actually performed. The contractor or subcontractor will be required to furnish written evidence of the registration of his or her program and apprentices as well as of the appropriate ratios and wage rates for the area of construction, prior to using any apprentices on the contract work. (See Section 220.3-e).

### **§ 16.5 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 this Contract, or of his or her right title, or interest therein, or his or her 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 or her right, title or interest therein, or his or her power to execute such contract, to any other person or corporation, the officer, board or agency which let, made, granted, or awarded such contract shall revoke and annul such contract, and the political subdivision or district therein, as the case may be, and such officer, board or agency shall be relieved and discharged from any and all liability and obligations growing out of such contract to such contractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such contractor, and his or her 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 or her employees. The provisions of this section shall not hinder, prevent, or affect an

assignment by any such contractor for the benefit of his or her creditors made pursuant to the laws of this state.”





SECTION 01 12 00 – SUMMARY OF PRIME CONTRACT

PART 1 – GENERAL

**1.1 RELATED DOCUMENTS**

- A. Drawings and general provisions of the Contract, including General Conditions and other Division 1 Specification Sections, apply to this Section.

**1.2 SUMMARY**

- A. This section includes:
1. Design/Management Identification.
  2. Work covered by Contract Documents.
  3. Work Sequence.
  4. Contractor's use of Premises.
  5. Occupancy Requirements.
  6. Coordination.
  7. Contract Documents.
  8. Additional Notes to Contract Documents
  9. Prime Contractors' Scope of Work.

**1.3 DESIGN/MANAGEMENT IDENTIFICATION**

OWNER

Board of Education  
Cazenovia Central School District  
31 Emory Avenue  
Cazenovia, NY 13035  
Phone: (315) 655-5354  
Contact: Mr. Eric Benedict

ARCHITECT/ENGINEER

See Owner

CONSTRUCTION MANAGER

See Owner

**1.4 WORK COVERED BY CONTRACT DOCUMENTS**

- A. Project Description
- a. The project consists of Reconstruction to the following:
    1. Burton Street Elementary School
- B. Contract Documents were prepared by Cazenovia Central School District.
- C. The Work will be constructed under a Prime Contractor Agreement. One set of contract documents is issued covering the Prime Contract. Prime Contracts are separate contracts between the Owner and independent contractors representing significant construction



activities. The Prime Contract is performed concurrently and closely coordinated with construction activities performed on the Project, under other Prime contracts at the same time.

The Prime Contract for this Freezer/Cooler Project includes:

CONTRACT #100: Freezer/Cooler Contract

- D. Definition of Extent of Prime Contract Work: The Contract Documents indicate the extent of the prime contract.

### **1.5a SPECIFICATION FORMATS AND CONVENTIONS**

- A. Specification Format: The Specifications are organized into Divisions and Sections using the CSI/CSC's "Master Format" numbering system.
1. Section Identification: The Specifications use section numbers and titles to help cross-referencing in the Contract Documents. Sections in the Project Manual are in numeric sequence; however, the sequence is incomplete. Consult the table of contents at the beginning of the Project Manual to determine numbers and names of sections in the Contract Documents.
- B. Specification Content: The Specifications use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:
1. Abbreviated Language: Language used in the Specifications and other Contract Documents is abbreviated. Words and meanings shall be interpreted as appropriate. Words implied, but not stated, shall be inferred, as the sense requires. Singular words shall be interpreted as plural, and plural words shall be interpreted as singular where applicable as the context of the Contract Documents indicates.
  2. Imperative mood and streamlined language are generally used in the Specifications. Requirements expressed in the imperative mood are to be performed by Contractor. Occasionally, the indicative or subjunctive mood may be used in the Section Text for clarity to describe responsibilities that must be fulfilled indirectly by Contractor or by others when so noted.
    - a. The words "shall," "shall be," or "shall comply with," depending on the context, are implied where a colon (:) is used within a sentence or phrase.

### **1.5b WORK SEQUENCE**

- A. All Work will be conducted in a sequence (refer to the Milestone Schedule provide in this Specification Section) to provide the least possible interference to the activities of the Owner's personnel and to permit the facilities to be occupied during construction and renovations at the existing schools. Any work required to be performed other than during a school break period (refer to the Cazenovia CSD School calendar, which is available on the Cazenovia CSD website online, for exact dates of district breaks), must be performed on a B or C shift, so as not to interfere with normal school operations.

1. The Contractors are expressly forewarned that impacts to the construction schedule during any phase or portion of the project will not be permitted.
  2. The Prime Contractor is responsible to provide adequate manpower throughout the course of the Project as necessary to maintain the overall construction schedule and milestone dates.
- B.** When school is not in session, normal working hours shall be between the hours of 7:00 AM and 5:00 PM daily, Monday through Friday. Activity and access shall be confined to only the designated work areas noted on the contract documents. All exit and escape windows shall be maintained at all times. All work activities shall be conducted in a manner which causes minimal disruption. Any work which requires disruption to the occupants, entry/exits, utilities, etc., shall be coordinated with and approved by the Owner and Construction Manager. **Shift work will be required for all activities that have to be carried out while school is in session.** Shift work is defined as that work which will occur after 3:00 PM, and until 6:00 AM the following morning. Work on weekends may occur with the permission of the Owner and the Construction Manager. **There will be absolutely NO additional payment to a contractor for shift work and premium time.**

**All work, including punch list and final close-out, must be complete no later than dates stated in the Milestone Schedule.**

## **1.5 PRIME CONTRACTOR USE OF PREMISES**

- A. General:** The Contractors shall limit their use of the premises to the work indicated.
- B. Use of the Site:** Limit use of the premises to work in areas indicated. Confine operations to areas within contract limits indicated. Do not disturb portions of the site beyond the areas in which the Work is indicated.
1. Owner Occupancy: Allow for Owner occupancy and use by the public.
  2. Driveways and Entrances: Keep driveways and entrances serving the premises clear and available to the Owner, the Owner's employees, and emergency vehicles at all times. Do not use these areas for parking or storage of materials. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.
  3. Contractors will be instructed to designated staging/parking areas before the start of construction.
- C. Use of the Existing Buildings:** Maintain the existing buildings in a service and weather-tight condition throughout the construction period. Repair damage caused by construction operations. Take all precautions necessary to protect the building and its occupants during the construction period.

## **1.7 OCCUPANCY REQUIREMENTS**

- A. Partial Owner Occupancy:** The Owner reserves the right to occupy and to place and install equipment in completed areas of the building prior to Substantial Completion, provided such occupancy does not interfere with completion of the Work. Such placing of equipment and partial occupancy shall not constitute acceptance of the total Work.

Cooperate fully with the district or his representative during construction operations to minimize conflicts and to facilitate Owner usage. Perform the work so as not to interfere with the district's operation.

1. Prior to partial Owner occupancy, mechanical and electrical systems shall be fully operational. Required inspections and tests shall have been successfully completed. Upon occupancy, the Owner will operate and maintain mechanical and electrical systems serving occupied portions of the building.
2. Upon occupancy, the Owner will assume responsibility for maintenance and custodial service for occupied portions of the building. **However, the District will not clean up behind contractors; responsibility for any debris caused by contractor operations remains with the Prime Contractor.**

## 1.8 COORDINATION

- A. All prime contractors shall coordinate with one another, and each are responsible to interface their Contract work with the work of all other Prime Contractors. Each contractor shall schedule their work, to avoid any delays in the overall completion of the schedule, which may result from the inability of other Contractors or Suppliers to access the building or site to properly install their equipment within the time frame of the Construction Schedule.

## 1.9 ASSIGNMENT OF WORK

- A. The set of Contract Documents is issued for the work of these Contracts only, with limited exclusion for work specifically indicated by others.
- B. It is the Contractor's responsibility to carry out the full scope and coordination requirements of the Work of his contract in relation to all other Contracts, as if they were "one".
- C. Contractor is responsible for all Work under his Contract, no matter on which drawing or specification that work appears.
- D. Where a specification section is assigned to only one Contract, the Contractor is responsible for the entire Work of that section unless that section is modified to indicate that portions of the Work are to be completed by others.
- E. Unless otherwise indicated, the Work described in this Section for each contract shall be complete systems and assemblies, including products, components, accessories, and installation required by the Contract Documents.
- F. Where a specification section is assigned to more than one Contract, the Contractor is responsible for only the Work of that section as it applies to the work of his Contract.
- G. When the term "provide" or "providing" is used in describing the scope of work it shall mean furnish and install. Where no designation is given, the term "provide" or "providing" shall be implied.

- H. Local custom and trade union jurisdictional settlements do not control the Scope of Work included in a Contract. When a potential jurisdiction dispute or similar interruption of work is first identified or threatened, the affected Contractor shall promptly negotiate a reasonable settlement to avoid or minimize the pending interruption and delays.

#### **1.10 SCOPE OF WORK - ALL CONTRACTS**

- A. All OSHA safety and hazardous materials regulations will be enforced on this project. Contractor must submit a safety program; a hazardous materials program (all required data must be maintained at the job site), prior to mobilization to the Project site.
- B. All prime contractors are advised that they MUST adhere to the regulations of SED155.5, Uniform Safety Standards for School Construction and Maintenance Projects. A copy of this document should be downloaded by all prime contractors at the following website address-  
<http://www.emsc.nysed.gov/facplan/articles/Checklistofitemsrequiredby155.html>., and has also been restated within Specification Section 01 35 26 Governmental Safety Requirements.
- C. Each contractor is responsible for fire-stopping penetrations related to his work in accordance with applicable specifications sections, Federal, State, and Local codes, and as required to maintain fire rated assemblies.
- D. Each contractor is responsible for temporary construction where indicated including the initial construction of the temporary system, removal of the temporary system when no longer required, restoration of new and or existing construction affected by the temporary system, and the final construction required to complete the Work.
- E. Each contractor is responsible for the cutting and patching required for the work of his subcontract unless otherwise indicated. The work shall include temporary closure of openings with fire-rated material until permanent work is complete.
- F. When an individual contractor is working in or adjacent to an occupied area which is separate from the other contractors; that Contractor is responsible for providing temporary partitions, dust enclosures, related protection devices, and negative air systems.
- G. Each contractor is responsible for providing joint sealants required for the work of his Contract.
- H. Temporary fuel tanks are not permitted on school district property.

#### **1.11 CONTRACT DOCUMENTS**

The following documents are hereby defined as contract documents, and are specifically included and defined as integral to each Prime Contract:

## **ALL INTRODUCTORY INFORMATION**

### **ALL DIVISION 00 SECTIONS – PROCUREMENT AND CONTRACTING REQUIREMENTS**

### **ALL DIVISION 01 SECTIONS- GENERAL REQUIREMENTS**

Drawing Index: The Prime Contractor is responsible for information provided in the Contract Documents.

All applicable Federal, New York State, Village and Town or local government or School District laws, codes, standards, rules, and regulations including, but not limited to, zoning, planning, fire, health, tax, insurance, safety, OSHA, criminal, building code, plumbing code, HVAC code, electrical code, utility company, traffic, labor, transportation, environmental, and education, shall apply.

## **1.12 ADDITIONAL NOTES TO CONTRACT DOCUMENTS**

### **1. The following notes are integral to each Prime Contract:**

- a. All bidders are required to thoroughly review all information within the Contract Documents, as well as visit the project sites. Errors and omissions on the part of the bidder will not be cause for additional compensation.
- b. The prime contractor should note that Performance Bonds, and Labor/Material Payment Bonds will be required of all awarded contractors for each contract.
- c. The prime contractor should note that the project is applicable to all prevailing wage rates. Contractors will be required to submit with each month's payment application, certified payroll reports for their own employees, as well as those of any subcontractors utilized. Failure to provide reports will cause rejection of a contractor's payment application.
- d. The prime contractor will be responsible for maintaining a set of as-built drawings, on a monthly basis as a condition of payment. Updates to the drawings will include posting any and all changes made during the month including posting all change order work, field directives, sketches issued, Requests for Information (RFI) answers received, etc.
- e. Any changes which are submitted for additional work that are either requested by the owner/CM/Architect/Engineer, or are contractor generated; will require detailed backup to be submitted for a proper review to be made. This detailed backup would include the following as example: 1) Labor: # of hrs X # of men X posted rate with benefits = total labor cost 2) Material: # of widgets X \$dollars/widget = total material cost 3) Equipment: 1 manlift for # of days X rate/day = total equipment cost 4) Subcontractor quote: Attach subs quote which will also contain the same level of detail and backup stated above 5) Specified overhead/profit percentages = total OH&P 6) Grand total quotation = \$ \_\_\_\_\_. Any quote received in a "lump sum" format without a detailed cost breakout will be rejected and returned. Also, a contractor should be cautioned not to proceed with a change until written approval

has been received. Should a contractor proceed with a change without approval, he will have done so at his own risk without a guarantee of payment.

- f. Contractor progress billing will be carried out using the AIA G732 CMA form, and AIA G703. All contractors will be required to submit an e-mailed draft copy to the construction manager by the 20<sup>th</sup> of the month for review. After the pencil copy is reviewed by the CM/owner/Architect/Engineer, the contractor will be notified to make corrections (if any) found. Once notified, the contractor will submit by the twenty-fifth (25<sup>th</sup>) of the month: five (5) original signed/notarized copies with all required attachments including certified payroll reports, and the signed lien waiver form (see section 00 60 00).
- g. Concerning the submission of project closeout data: The prime contractor will be required to submit at least two (2) paper copies of three-ring bound operations and maintenance (O&M) manuals, as well as a CD with PDF files of all O&M information, all as-built drawings, and all approved submittals, which will be kept by the owner. These O&M manuals will be in addition to any other required closeout documents listed within each individual specification section; and/or Specification Sections 01 77 00, 01 78 23, 01 78 39, and 01 79 00. Prior to project substantial completion, the construction manager will aspire to prepare a general listing of required closeout items for each prime contractor; based on items found within the contract documents.
- i. Review Section 01 23 00 for bid Alternates required in the Prime Contractors scope of work, if accepted by the owner through the award of bids.
- j. Review Section 01 50 00 for Temporary Facilities & Controls requirements that apply to the prime contractor.
- k. The contractor is responsible for the layout and survey of their own work or work requirements unless noted elsewhere in the Contract Documents.
- l. The Contractor shall provide all temporary shoring, bracing, support or protection systems necessary to expedite with work requirements including the maintenance of worker safety.
- m. The contractor is responsible for the safety of their own workers, subcontractors, work area, and other personnel on site. Every contractor is responsible for maintaining a safe work site and safety procedures.
- n. The contractor should note that it is a requirement that ALL employees of a contractor who are working on a public project MUST have taken at least the OSHA ten (10) hour course, prior to being accepted onto the work site. A copy of each contractor's employee's OSHA ten (10) hour course card will be requested and will be kept on file with the construction manager.
- o. The contractor is required to implement and maintain a project-specific safety program. Contractors shall submit their safety program to the Owner for review five (5) days prior to mobilization to the site. The program shall include company safety philosophy, history, action plan, manuals, hazardous communications sheets, OSHA



filings, meeting minutes, reporting system for any accidents or injuries, and MSDS book of all materials to be used on the project.

- p. The wearing of hard hats and other PPE is mandatory for all employees of a contractor, in accordance with the contractors' own company safety plan and policies.
- q. All contractors are to maintain one employee as a fire watch during all torch cutting and welding activities on this project. The fire watch person shall remain on watch for no less than two (2) hours after the activity is completed.
- r. All contractors employees and their subcontractors' employee's, are required to wear picture identification badges at all times while on site. The Owner will produce the badges for each contractor. When a new employee first enters the site, they must report to the District's construction manager's field representative. The contractor's employee will then have his/her photo taken, and the badge will be created at that time for their use throughout the project. Lost or stolen badges will result in a \$100.00 replacement fee being charged to obtain a duplicate badge.
- s. **The Prime Contractor must be aware of the Environmental Protection Agency's (EPA) regulations regarding working in child occupied facilities, which took effect on April 22, 2010, for Lead Renovation, Repair, and Painting.** The EPA website is the best source of information regarding this, and information can be found at the following link: <http://epa.gov/lead>. Under the rule, child-occupied facilities are defined as residential, public, or commercial buildings where children under age six are present on a regular basis. The standard applies to Contractors who perform renovations, repairs, and painting jobs in pre-1978 housing and child-occupied facilities. Each Contractor is required to do the following:
  - i. **Provide a copy of the EPA or state lead training certificate. Prior to work beginning, the Contractor will be required to submit to the Construction Manager, the name of its on-site competent person, along with a copy of that individuals EPA Lead training certificate.**
  - ii. **Tell the Owner, Construction Manager, and Architect what lead-safe methods that the Contractor will use to perform the work.**
  - iii. Learn the laws that apply to each Contractor regarding certification and lead-safe work practices.
  - iv. **A copy of the lead-based paint survey report is available for ALL contractors to review upon request to the school district. The failure of a contractor to review the report is NOT cause for additional compensation. Each contractor who will be encountering lead-based paint during their work, IS responsible for its proper removal without additional compensation, prior to work occurring. That work may include, but is not limited to welding, painting, etc.**
  - v. Provide References from at least three (3) recent jobs worked in, involving homes or child occupied facilities built before 1978.

- vi. Keep records to demonstrate that the Contractor and its workers have been trained in lead-safe work practices and that the Contractor is following lead-safe work practices on the job.
  - vii. Read about how to comply with the EPA's rule in the *EPA Small Entity Compliance Guide to Renovate Right (PDF)*.
  - viii. Read about how to use lead-safe work practices in the EPA's *Steps to Lead Safe Renovation, Repair, and Painting (PDF)*.
- t. In the event there are questions regarding scope of work, the scope of work requirements outlined in Section 011200 shall supersede scope of work notations on the contract drawings.
- u. Any notations in contract documents or drawings which indicate, "Prime Contractor", "Freezer/Cooler Contractor", "General Contractor (G.C.)" or "General Work Prime Contractor" refer to Contract 100.
- v. The Prime Contractor is responsible for all work under their contract, no matter what drawing on which that work appears. Specifications for that work would also apply to the contractor, whether or not specifically listed as their work.
- w. The successful prime contractor shall submit a resume to the Owner/Construction Manager for their proposed project manager, and field superintendent to be used throughout the project. These resumes will be reviewed with the Owner and Architect for approval. Should the Project Manager and/or Superintendent prove unqualified for the position at any point in the project, the Owner/Construction Manager shall issue a letter stating that that person is to be removed from involvement in the project. Action must be made by the contractor within three (3) working days of receipt of such a letter. The Prime Contractor is to always maintain competent personnel on site when work is being conducted to monitor both the contractor's, as well as any subcontractor's operations. Normal and emergency contact phone numbers for all key personnel must be provided to the Owner/Construction Manager for use.
- x. The contractor must maintain a complete and updated set of contract documents within their field office, as well as a complete set within each gang box at each separate building. A complete and updated set of Contract Documents will include any Addendums posted, Change Order work noted, and any other required modifications attached. A set of approved shop drawings, samples, color schedules and other data pertinent to the Project must also be present in the contractor's field office. These documents will be requested to be reviewed from time to time by the Owner.
- y. The Prime Contractor is to survey existing work and submit to the Owner/Construction Manager a list of damaged areas (e.g.: ceiling tiles) prior to commencing work. Any damaged areas not identified prior to the start of work shall be the responsibility of the prime contractor(s) working in that area. The Prime Contractor shall return areas disturbed by their work activities to the same condition found prior to the start of the work.

- z. The Prime Contractor must have a project management level, decision-making representative at each bi-weekly Project Meeting. A weekly foreman's coordination meeting will also be held, for which attendance is mandatory for a Field Superintendent level representative to attend. Other meetings may also be held periodically, such as for scheduling, preconstruction work review, etc. if required; and appropriate representatives will also need to attend those meetings.
- aa. There is absolutely no use of any tobacco products on the work site or anywhere on the owner's property by New York State law. Should a contractor's employee be seen using tobacco on the owner's property, the responsible prime contractor will receive a \$100.00 fine per incident, which will be deducted from their contract value by change order.
- bb. Alcohols, drugs, firearms, pornography, and use of foul language are strictly forbidden from the project, and anywhere on school property. The District has zero tolerance for such actions. Possession or use of such will result in an immediate termination and permanent discharge from the project.
- cc. The District has the right of first refusal for any equipment and/or materials to be disposed of. The responsible Prime Contractor will be required to move items which are requested to be saved at their own expense, to a location designated by the District.
- dd. The Owner/Construction Manager will receive copies of the Prime Contractors daily reports on a weekly basis, listing daily activities and listing daily manpower by trade.
- ii. There will be NO contact between the Contractor or their personnel and any of the school's students or staff other than designated construction representative. The Contractors are not to take direction from anyone but the designated construction representative.
- jj. The New York State Education Department requires the School Districts to establish a Health and Safety Committee to monitor safety during school construction projects. This committee will consist of School Administrators, Teachers, and others. During actual construction this committee can be expanded by the Board of Education of a particular School District to include the Project Architect, the Construction Manager, and the Prime Contractors. This committee will meet periodically to review and address issues related to health and safety related to the construction project. Each Prime Contractor is to cooperate with the rulings of the committee and participate when asked to do so.
- kk. The State Education Department has established a rule that noise levels due to construction activity can not exceed 60 dba when measured with type 2 sound level meter, in areas occupied by school students or the school's staff. All Prime Contractors need to anticipate construction activities that will produce noise levels above 60 dba and schedule this work accordingly when students and staff are not present. Any construction noise that exceeds 60 dba in school occupied areas will be shut down by the Owner/CM, and the responsible Prime Contractor will be asked to perform the operation when the area is not occupied by the school. No additional compensation will be allowed for compliance with this regulation.

- II. In the interest of the safety of each contractor and his employees, as well as the safety of building occupants; all contractors need to be aware of the School District's policies concerning Building Lock-Down and Building Lock-out. Each Contractor and their employees will be required to adhere to the district's policies without exception, if a situation occurs which requires these policies to be employed, or when a scheduled readiness drill may occur. These policies are defined as follows:
- a. **Lock-Down**
    - All exterior and interior doors are locked.
    - All people must get to the nearest room and remain in that room.
    - No one is to respond to fire alarms unless an imminent fire is visible.
    - No one outside the building will be allowed entry into the building, except emergency responders.
    - If one building in a District goes into Lock-Down, all other District buildings go into Lock-Out.
    - Only a law enforcement officer can release a lock-down order.
  - b. **Lock-Out**
    - Exterior doors of the building are locked.
    - Business is conducted as usual inside the building.
    - No one outside the building is allowed inside, except emergency responders.
    - No one inside the building is allowed outside.
    - If one building in a District goes into Lock-Out, all other District buildings will also go into lock-out.
    - Only a school district official can release a lock-out order.

### 1.13 PROJECT MILESTONE SCHEDULE

- A. A project schedule has been established to conform to the Owner's requirements.
- B. Time is of the essence for this project.
- C. It is the responsibility of the Contractor to plan and coordinate their work to comply with the project schedule.
- D. The Contractor hereby agrees to carry out the work in full cooperation with the Owner, Architect, Construction Manager and Agencies of Jurisdiction.
- E. **At no extra charge to the Owner, the Contractor shall employ the number of workers, supervisory personnel and shall work the number of legal shifts each day (including weekends, if necessary) for the Subcontractors to complete the work in accordance with the project schedule and attain substantial completion within the time period indicated in the project schedule.**
- F. The specific dates in the project schedule may be subject to change by the Owner,
- G. The total elapsed time will remain as indicated.
- G. **Within five (5) days of contract award notification, the prime contractor will be required to submit to the construction manager a detailed construction schedule, broken out by individual building and/or work area, that covers the work of each of their appropriate disciplines based on the below listed general milestone dates.** These schedules will then be reviewed by the construction manager and implemented into a master construction schedule to be approved by all prime contractors for use throughout the project.

## Schedule of Milestone Activities & Dates

| BUILDING, WORK ITEM, & PHASE   | START DATE  | COMPLETION DATE        |
|--|---|------------------------|
| Bidding Documents Available from the Printer                                     | Wednesday May 29, 2024  | n/a                    |
| Pre-Bid Meeting, & Building's Walk Through's Immediately After:                  | Wednesday June 5, 2024 at 3:00 in the Burton Street Elem. Cafeteria   | n/a                    |
| <b>Sealed Bids Received:</b>   | <b>Wednesday June 12, 2024 by 10:00 AM to the Cazenovia CSD District Office.</b> Bids opened immediately after, in the District Office Conference Room. | n/a                    |
| Approximate Project Award:   | June 18, 2024   | n/a                    |
| Preconstruction & Project Kick-off Meeting: and Contractor CPM Schedule Received | June 26, 2024 10:00 AM, Location TBD  | n/a                    |
|  |   |                        |
|  |   |                        |
| <b>BURTON STREET ELEM. SCHOOL</b>  | <b>START DATE</b>   | <b>COMPLETION DATE</b> |
| Summer Work & Completion:  | June 26, 2024   | August 21, 2024        |

## 2.0 PRIME CONTRACTORS SCOPE OF WORK

Each prime contract is summarized, and the scope of work for this project includes the following:

### A) Contract 100 Freezer/Cooler Contractor

Provide all material, labor, equipment, Subcontractors, supervision, management, and administration required for the total performance of the work of this contract including:

1. The Work of this Contract includes the work shown or described on the following Contract Documents:

#### Introductory Information

Division 00 Bidding Requirements And Conditions of the Contract - All Specification Sections

Division 01 General Requirements - All Specification Sections

2. The Freezer/Cooler Contractor (Contract 100) work shall include, but not be limited to the following:

1. Demolition and removal.
2. Walk-in Freezer Replacement
3. Walk-in Cooler Refrigeration Replacement
4. Provide final cleaning to clean ALL work areas and all installed items within the building just prior to substantial completion

3. **Notes to Freezer/Cooler Contractor (Contract 100)**

- a. Dust control must be maintained during ALL interior renovations performed by this Contract. The Freezer/Cooler Contractor (Contract 100) is to provide negative air-conditions in areas to minimize any exposure to dust and/or contaminants from migrating to other areas of the school buildings. This is in conjunction with installing poly sheeting barriers, temporary hard walls, or other temporary protection measures required.
- b. The Freezer/Cooler Contractor (Contract 100) shall provide dumpster service for the use of this contract. Daily cleaning is the responsibility of this contract.
- c. Freezer/Cooler Contractor (Contract 100) shall Provide (Manufacturer and Model #s are Basis of Design and Equivalent Products will be considered; substitute products must be approved Prior to Bid):
  - i. Replace Walk-in Freezer (including but not limited to):
    1. Remove existing cooler from site and discard of all panels.
    2. Disconnect high voltage wiring and save for reuse.
    3. Disconnect the drain and save for reuse.
    4. Disconnect and remove the refrigeration line set and discard.
    5. Disconnect and remove evaporator from cooler and discard off site.
    6. Disconnect and remove condenser from the roof and discard off site.
    7. Furnish and install insulated walk-in freezer box including a. (1) standard door- center front with strip vinyl curtain. b. (1) internal LED light over door with external switch. c. Stucco-embossed galvalume steel exterior. d. Stucco-embossed galvalume steel interior. e. Deadbolt handle latch. f. Interior ramp inside cooler (to accommodate longer walk-in design). g. Medium use floor (hand truck and cart) made of 16ga. stainless steel. h. 3.5" pre-insulated walls.
    8. Furnish and install (1) new Bally evaporator including: a. Equipment sized to keep cooler between 0-10 degrees. b. Factory installed SmartVap + EEV. c. Electronic controller with SmartVap + display. d. Factory built in thermostat. e. Factory built in solenoid valve.
    9. Furnish and install (1) Bally Condenser on roof to include: a. R-448A freon. b. Factory outdoor weather guard/casing. c. Heated and insulated receiver.
    10. Furnish and install line set between condenser and evaporator.
    11. Reconfigure high voltage wiring to cooler lighting and switches as well as to the evaporator and condenser.



12. Adapt PVC drain from evaporator to existing drain with cleanout.
  13. Furnish freon as required for the system to run.
  14. Start and test equipment per manufacturer's start up instructions.
  15. Final clean construction area prior to turning over to the Owner.
  16. (1) year warranty on all new equipment, material, parts, and labor provided.
- ii. Replace Walk-in Cooler Cooling System Components (including but not limited to):
1. Disconnect high voltage wiring and save for reuse.
  2. Disconnect the drain and save for reuse.
  3. Disconnect and remove the refrigeration line set and discard.
  4. Disconnect and remove evaporator from cooler and discard off site.
  5. Disconnect and remove condenser from the roof and discard off site.
  6. Furnish and install (1) new Bally evaporator including: a. Equipment sized to keep cooler between 35-40 degrees. b. Factory installed SmartVap + EEV. c. Electronic controller with SmartVap + display. d. Factory built in thermostat. e. Factory built in solenoid valve.
  7. Furnish and install (1) Bally Condenser on roof to include: a. Factory outdoor weather guard/casing. b. Heated and insulated receiver.
  8. Furnish and install line set between condenser and evaporator.
  9. Adapt high voltage wiring to evaporator and condenser.
  10. Adapt PVC drain from evaporator to existing drain with cleanout.
  11. Furnish freon as required for the system to run.
  12. Start and test equipment per manufacturer's start up instructions.
  13. Final clean construction area prior to turning over to the Owner.
  14. (1) year warranty on all new equipment, material, parts, and labor provided.
- d. All wall, floor, and roof penetrations. Any structural opens must receive approved structural support and roof penetrations must be sealed watertight in accordance to maintaining the Roof Warranty.
- e. Freezer/Cooler Contractor (Contract 100) specific selective demolition:
1. All demolition complete including but not limited to condensers, pumps, electrical wiring and connections, refrigerant lines, reclamation and disposal of refrigerant, existing Freezer box, condensate lines, existing Freezer Controls/Alarms.
  2. All patching to match finishes of surfaces affected by the demolition work of this Contract. Surfaces scheduled to receive new finishes are to be patched ready to receive the new finishes.
- f. The above list is presented for general guidance only and does not necessarily cover the entire requirement of the project as shown on the drawings and/or as specified hereinafter. The **Freezer/Cooler Contractor (Contract 100)** shall provide a complete system.

**END OF SECTION 01 12 00**