

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Ossining Public Library
Boiler Plant and HVAC Upgrades
53 Croton Avenue, Ossining, NY 10562

THE OWNER:

(Name and address)

Ossining Public Library
53 Croton Avenue
Ossining, NY 10562
T. 914.941.2416

THE ENGINEER:

(Name and address)

OLA Consulting Engineers
50 Broadway, Suite 2
Hawthorne, NY 10532
T. 914.747.2800

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement), and include the Invitation (Advertisement) To Bid, Instructions To Bidders, Supplementary Instructions To Bidders (if any), Bid Form (including Unit Prices, if any) executed by Bidder, the Non-Collusive Bidding Certification (if any) executed by Bidder, the Agreement Between Owner and Contractor ("Agreement" or "Contract"), General Conditions of the Contract for Construction, any Supplementary Conditions, Specifications, Detail Book, Drawings, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued or negotiated after receipt of bids or 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 Engineer.

§ 1.1.2 THE AGREEMENT

The Contract Documents form the Contract for Construction. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only by a Modification. Except as expressly provided herein, the Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Engineer or the Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Engineer or the Engineer's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Agreement intended to facilitate performance of the Engineer's duties. Where the term "Agreement," "Prime Contract," or "Contract" is used in the General Conditions and other Contract Documents, it shall mean the Agreement between the Owner and each Contractor.

§ 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. To the extent that the Work includes the demolition and removal of existing structures and improvements, the term "construction" as used in the Contract Documents shall be interpreted and construed to include such demolition and removal services.

§ 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 the Owner and by separate contractors.

§ 1.1.5 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. The Drawings are illustrative only. All dimensions and quantities shall be verified by the Contractor. The Drawings are as listed within the "List of Drawings" provided with the drawing set. All Work under the Contract shall be executed in accordance with the Contract Documents, which are complimentary as described herein. The "List of Drawings" is incorporated in the Standard Form of Agreement Between the Owner and the Contractor.

§ 1.1.6 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.

§ 1.1.7 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 Engineer and the Engineer'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.

§ 1.1.8 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 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 [Intentionally Omitted]

§ 1.1.10 Miscellaneous Definitions

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

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

§ 1.1.10.3 Except as otherwise explicitly provided, the words “approved” or “approval” shall mean the written approval of the Engineer.

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

§ 1.1.10.5 The term “as indicated” or “as shown” shall mean “as indicated in the Contract Documents.”

§ 1.1.10.6 The term “include” in any form other than “inclusive” is non-limiting and not intended to mean “all inclusive.”

§ 1.1.10.7 The phrase “persistently fails” and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, that cause the Owner and/or the Owner’s Authorized Representative to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in what it or they reasonably deem not to be in substantial compliance with the requirements of the Contract Documents.

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

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

§ 1.1.10.10 The term “product” includes materials, systems, equipment, and other items to be incorporated into the Work.

§ 1.1.10.11 The term “provide,” unless specifically noted otherwise, shall mean furnish and install and shall include, without limitation, all labor, supervision, materials, equipment, transportation, services and other items required to complete the Work. The word “complete” shall refer to a working system ready to serve the designated intent. Where items are specified by the use of a reference standard not bound in the Specifications, the date of the reference standard shall be the latest edition at the time of signing the Contract, except as specifically indicated otherwise

§ 1.1.10.12 The term “replace” or similar term shall mean “restore,” “renew,” “make good,” “reconstruct,” or “as applicable using new product.”

§ 1.1.10.13 The Contract Time is the period of time specified in the Agreement for completion of the Work.

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

§ 1.1.10.15 “Wiring” shall be understood to mean wires or cables with conduit, fittings, boxes, etc., installed complete.

§ 1.1.10.16 “Piping” shall be understood to mean all pipes, fittings, nipples, valves and all accessories connected thereto.

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of work or (2) comply with the more stringent requirements; either or both in accordance with the Engineer's interpretation. After execution of the Agreement and during the course of the Work should any ambiguities, discrepancies, omissions, or apparent errors be found on the drawings or in the specifications to which the Contractor has failed to call attention prior to submitting its bid, then the intention of the Contract Documents is to be interpreted by the Engineer, whose decision as to the intent shall be final, and the Contractor agrees to carry out the Work in accordance with the decision of the Engineer. Until such time as an interpretation is issued, it shall be assumed that the Contractor has based its bid on providing the Work in the better quality, greater quantity, or most expensive manner, for Work complete in every detail, even though every item necessarily involved is not particularly mentioned. If necessary measurements are missing or Work specified or shown in the Contract documents is obviously incorrect or impossible to execute, or figures fail to check, the Contractor shall call these facts to the attention of the Engineer for interpretation as described herein. On the Drawings, given dimensions shall take precedence over scaled measurements and large scale drawings over small scale drawings. The Contractor shall not scale Drawings. The Contractor shall notify the Engineer if additional dimensions are needed. The Contractor shall field verify all dimensions. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted to the Engineer for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for review by the Engineer before making the change. Where the Contractor perceives a conflict, it shall inform the Engineer and Owner thereof and request a decision from the Engineer, which shall be promptly communicated by the Engineer to the Contractor so as not to cause any delay in the performance of the Work. Any Work performed after perceiving the conflict and prior to resolution by the Engineer shall be at the Contractor's risk. The terms and provisions of this Section, however, shall not relieve the Contractor of any of the obligations set forth elsewhere herein.

§ 1.2.1.1 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) 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, any phased construction plan and (7) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 1.2.1.1.

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 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 Subcontractors, if any.

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

- .1 Change Orders;
- .2 The Agreement between Owner and Contractor;
- .3 Addenda, with those of later date having precedence over those of earlier date;
- .4 The Supplementary, Special, or other Conditions as may be part of the Contract Documents;
- .5 The General Conditions of the Contract for Construction;
- .6 Drawings and Specifications. In the case of an inconsistency between Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Engineer's interpretation. If a work item or component is present in the Drawings but not the Specifications, or vice versa, that work or component shall be provided.

§ 1.2.6 In the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of work or (2) comply with the more stringent requirements; either or both in accordance with the Engineer's interpretation. After execution of the Agreement and during the course of the Work should any ambiguities, discrepancies, omissions, or apparent errors be found on the drawings or in the specifications to which the Contractor has failed to call attention prior to submitting its bid, then the intention of the Contract Documents is to be interpreted by the Engineer, whose decision as to the intent shall be final, and the Contractor agrees to carry out the Work in accordance with the decision of the Engineer. Until such time as an interpretation is issued, it shall be assumed that the Contractor has based its bid on providing the Work in the better quality, greater quantity, or most expensive manner, for Work complete in every detail, even though every item necessarily involved is not particularly mentioned. If necessary measurements are missing or Work specified or shown in the Contract documents is obviously incorrect or impossible to execute, or figures fail to check, the Contractor shall call these facts to the attention of the Engineer for interpretation as described herein. On the Drawings, given dimensions shall take precedence over scaled measurements and large scale drawings over small scale drawings. The Contractor shall not scale Drawings. The Contractor shall notify the Engineer if additional dimensions are needed. The Contractor shall field verify all dimensions. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted to the Engineer for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for review by the Engineer before making the change. Where the Contractor perceives a conflict, it shall inform the Engineer and Owner thereof and request a decision from the Engineer, which shall be promptly communicated by the Engineer to the Contractor so as not to cause any delay in the performance of the Work. Any Work performed after perceiving the conflict and prior to resolution by the Engineer shall be at the Contractor's risk. The terms and provisions of this Section, however, shall not relieve the Contractor of any of the obligations set forth elsewhere herein.

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

§ 1.2.8 The Contract Drawings are intended to show the general arrangement, design, and extent of the Work and are partly diagrammatic. They are not intended to be scaled for any purpose, or to serve as shop drawings. The Contractor and its Subcontractors will cooperate with all other contractors and their respective subcontractors in determining the construction of systems, running of pipe, and locating equipment. The Contractor agrees that the failure to repeat typical details, figures, or notes on all Contract Drawings or other Contract Documents will not be a basis for claims for additional cost or time.

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

§ 1.2.8.2 If conflicting conditions or interferences develop, the Contractor and its Subcontractors will confer with the other contractors and their respective subcontractors whose work is affected to determine a solution acceptable to all interested parties. The suggested solution shall be submitted to the Engineer for comment and, if necessary, written approval.

§ 1.2.9 The Contract Documents intend a first class finished product of such character and quality as described in and reasonably inferred from the Contract Documents. The Contractor will perform its Work to be complete and operable, fitting with the work of other contractors and the Owner, and in compliance with best construction practices and the ordinances, codes, and regulations of all bodies or persons having governmental or regulatory authority over the Contractor and its Work.

§ 1.2.10 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.

§ 1.2.11 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 reference shall have the force and effect as though reproduced therein, and upon entering into the Contract the Contractor acknowledges its familiarity with those pertaining to its 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

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As to the Contractors, Subcontractors, and sub-subcontractors, the Engineer and the Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Engineer, or Engineer's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer's consultants. Nothing in this Section 1.5 shall be construed to alter the rights of the Owner toward the Instruments of Service and other documents prepared by the Engineer and the Engineer's consultants as set forth in the agreement between the Owner and the Engineer.

§ 1.5.3 The Contractor may not reproduce the Contract Documents in whole or part for use as shop drawing backgrounds without the prior written consent of the Engineer. If consent is given, the Engineer will determine the extent that the Contract Documents may be used in the preparation of shop drawings.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

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 Article 4, the Engineer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 [Intentionally Omitted]

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

(Paragraph Deleted)

§ 2.2.1 All permits and fees, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities are the responsibility of the Contractor under the Contract Documents with the exception that, unless otherwise provided under the Contract Documents, the Owner shall secure and pay for the building permit.

§ 2.2.2 The Owner shall make available for inspection, upon request, that field survey or testing information of existing conditions that is known to be available and that is held by the Owner at its offices. Such records and documents are not Contract Documents, and the Owner makes no representation as to their accuracy or completeness. **Notwithstanding the foregoing, information furnished by the Owner in the form of surveys, subsurface investigation reports, soil borings, and other material of a similar nature, is for general**

information only and is not a guarantee of the completeness or accuracy of such information, unless specifically noted otherwise herein. The Contractor shall verify all existing grades, conditions, and dimensions of existing physical conditions and structures and shall report any inconsistencies in writing to the Engineer. 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

§ 2.2.3

To the extent in the Owner's possession, the Owner may 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.

§ 2.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, up to three (3) sets of Drawings, Project Manuals, Detail Books, and Addenda materials for their use and the use of their Subcontractors during construction. Any additional sets or partial sets will be provided as required for the cost of printing, postage, and handling. The number of sets furnished for bidding purposes is set forth in the Invitation To Bid (Advertisement). Payment for additional sets or partial sets shall be due upon receipt of the documents. For expediency, at the discretion of the Engineer, Contractor may be directed to pick up documents at the Project designated printing facility. This practice will not be permitted without authorization of/and coordination by the Engineer. Electronic drawing files, AutoCAD format, may be available, at the discretion of the Engineer, for a cost of \$25.00 per drawing. Should Contractor request this service, the Contractor will be required to sign a disclaimer. Request for electronic files must be made in writing to the Engineer's office. This request must include a specific list of drawings required in this format. In response, the Engineer will verify the drawings requested and will forward the disclaimer for signature. Electronic files will be released upon receipt of payment and a fully executed disclaimer form.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If, as determined by the Owner or Engineer, the Contractor fails to correct Work which is not in accordance with the requirements of Contract Documents as required by Section 12.2 or persistently 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 fails to remove and discharge (within ten days) any lien filed upon Owner's property by anyone claiming by, through, or under Contractor, or disregards the instruction of the Engineer or Owner when based on the requirements of the Contract Documents, the Owner, by written order signed personally or by an agent so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated (as determined by the Owner or its agency); however, the right of Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right either on its behalf or for the benefit of the Contractor or any other person or entity. The Contractor shall stop work upon receipt of said order. The written order described herein above may be delivered to and shall be deemed received by the Contractor in the same manner as set forth in Section 2.4.1. This right is in addition to, and not in restriction of, the Owner's other rights herein, including, but not limited to, the Owner's rights under Section 12.2.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

2.4 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.4.1 Notwithstanding anything contained in the Contract Documents to the contrary, written notice pursuant to paragraph 2.4 shall be deemed received by the Contractor: (a) if by personal delivery, on the date of personal delivery to any officer, employee, or agent of the Contractor; (b) if by fax, on the date of faxing to the last known fax number of the Contractor; (c) if by courier service providing for overnight delivery to the Contractor's last known business address, the day following deposit with the courier service; or (d) if by registered, certified, or first class mail to the last known business address of the Contractor, five days after mailing. The Owner shall have the right to choose whichever method of delivery or such written notice it wishes.

§ 2.5 Extent of Owner's Rights

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

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Agreement. 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 obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer in the Engineer's 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 carefully examined the Contract Documents and the Project site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the Project site, the specific conditions under which the Work is to be performed, and all matters which may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all conditions and the Contract Documents will not be permitted.

§ 3.2.1.1 The Contractor and each Subcontractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2 and shall at once report in writing to the Engineer errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or the Engineer 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 Engineer. 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 Engineer, the Contractor shall assume full responsibility for such performance and shall bear sole responsibility for the costs for correction.

§ 3.2.1.2 The obligations of the Contractor under Section 3.2.1.1 and this Section 3.2.1.2 are for the purpose of facilitating construction by the Contractor and are not for the purpose of imposing an affirmative obligation on the

Contractor to discover errors, omissions, or inconsistencies in the design information in the Contract Documents. The Contractor's review of the Contract Documents is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically so provided in the Contract Documents.

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

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

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

§ 3.2.4 The Contractor may submit Requests for Information ("RFI") to the Engineer 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 Engineer 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 Engineer for RFI responses that in the opinion of the Engineer were available from a careful review of the Contract Documents, field conditions, other Owner provided information, Contractor prepared Coordination Drawings, and prior Project correspondence and documentation.

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

§ 3.2.6 The Contractor shall promptly report to the Engineer any nonconformity with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities discovered by or made known to the Contractor as a request for information submitted to the Engineer in such form as the Engineer may require.

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§ 3.2.7 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Engineer issues in response to the Contractor's notices or requests for information pursuant to this Section 3.2, the Contractor shall make a Claim as provided in Article 15. If the Contractor fails to perform the obligations of this Section 3.2, the Contractor shall pay such costs and damages to the Owner, including reasonable attorneys' fees incurred by the Owner as a result of such failure, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or the Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

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

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

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

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

§ 3.2.12 When required, off-site storage shall be the responsibility of the Contractor.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention, and shall complete the Work in a good and workmanlike manner in accordance with the Contract Documents. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, safety, safety precautions, 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 thereof and, except as stated below, shall be 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 and the Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer.

§ 3.3.1.1 Laying Out the Work: Each Contractor shall carefully lay out its Work in accordance with existing and new Work and shall verify all lines and levels indicated in the Contract Documents that affect its Work. Adjustments

required to suit field conditions shall be made only after Engineer's review. Each Contractor shall be responsible for the accuracy of layout and shall correct at its own expense any Work that its forces have laid out incorrectly. Each Contractor shall furnish and erect all necessary batter boards, establish all lines and levels in connection therewith, and run all subsequent lines and levels as the Work progresses in order to assure careful and accurate Work true to the proper lines in accordance with the Contract Documents. Any batter boards, monuments, or marks of reference, which may for any reason become disturbed or destroyed, whether such displacement or destruction is caused by carelessness, accident, or by the elements, shall at all times, be promptly and accurately reestablished by such Contractor. Each Contractor shall establish center lines, elevations and location of its Work when such are required by other Contractors to coordinate the location of their own Work.

§ 3.3.1.2 The Contractor shall review all specified construction or installation procedures, including those recommended by manufacturers, and advise the Engineer (1) if the specified procedure deviates from good construction practice, (2) if following the procedure will affect any warranties, including the Contractor's general warranty, (3) of any objections the Contractor may have to the procedure, and (4) of proposals for alternative procedures which the Contractor will warrant.

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

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

§ 3.3.1.4 Any or all Contractors working on the Project shall attend a preconstruction conference(s) or meeting(s) as deemed necessary by the Owner or Engineer to coordinate all Work (e.g., demolition, installation, etc.).

§ 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 performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors and other persons performing portions of the Work under a Contract or other arrangement with the Contractor.

§ 3.3.3 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 Engineer in its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.3.4 Where equipment lines, piping, ductwork, and/or conduit are shown diagrammatically, the Contractor shall be responsible for the coordination and orderly arrangement of the various lines of piping and conduit included in the Work of its Contract. The Contractor shall coordinate the work of its Subcontractors and prevent all interferences between or among equipment, lines of piping, and architectural or engineering 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 be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

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

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

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

§ 3.3.9 Shut Downs: Such work as connections to existing sewers, plumbing, heating, and electrical systems shall be coordinated at a time agreeable to the Owner and the Engineer, and shall be determined and agreed to well in advance of the actual performance of such work so as to interfere as little as possible with the operation and use of existing facilities. Shut downs must be coordinated through the Engineer. The continued uninterrupted operation of all facilities of the building is essential. If any existing facilities must be interrupted, the Contractor for the Work shall provide all necessary temporary facilities and connections necessary for maintaining these existing facilities at no increase in the Contract Sum except as otherwise specified. No mechanical, heating, plumbing, sprinkler, or electric service shall be interrupted at any time except as approved in advance by the Owner or when the buildings are not occupied and shall be coordinated with the Owner, as well as the Engineer. All communication systems must be maintained without interruption. As much related work as possible shall be performed prior to shut downs, so as to minimize the period of shut down. All material, equipment, and manpower necessary in the performance of a shut down shall be on site prior to interruption of service.

§ 3.3.10 Overtime: Each Contractor shall take note that there is Work required to be done under its Contract in other spaces adjacent to or distant from areas being altered, the Owner's use of facilities cannot be disturbed except by specific approval of the Owner. Such Work, as making connections, revisions, additions to existing mechanical and electrical lines or equipment, the cutting of new openings or other work of any sort, must be done at times as directed by the Owner when existing facilities are not in use and at no additional cost to the Owner

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and timely 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. The Contractor shall work continuously and expeditiously through completion of the Work. Time is of the essence.

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Engineer in accordance with the Contract Documents, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Engineer and in accordance with a Change Order or Construction Change Directive.

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

§ 3.4.3.1 If stored off site, the Contractor shall furnish proof of title by Owner and provide a Certificate of Insurance demonstrating adequate insurance coverage.

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

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

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

§ 3.4.4 At least 25% of the direct labor, materials, systems or equipment shall be provided by the Contractor. The unit measure (dollar value, unit price, schedule of value) utilized to determine the quantities of work, labor and material furnished by the Contractor shall be determined by the Engineer and shall be appropriate for the scope of work involved. Work performed by supervisory personnel, person above the level of foreman, or office personnel, all overhead costs, including bonds and certificates, shop drawings and similar items shall not count towards the percentage of work provided by the Contractor.

§ 3.4.5 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.

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

§ 3.4.7 The Contractor shall make every reasonable effort to avoid labor disputes and to insulate the Owner and Engineer from the effects of labor disputes should any arise. For the purposes of this Section, every reasonable effort shall include, but not necessarily be limited to:

- .1 requiring employees, Subcontractors, suppliers and others to use reserve gates which shall be established for the Project;
- .2 rearranging work schedules for the Contractor's Work or the work of its Subcontractors; and
- .3 including in Contractor's agreements with its Subcontractors the right to fully implement all provisions of this Section.

§ 3.4.7.4 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent execution of the Work, and the Contractor shall maintain labor peace for the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Time or the Contract Sum.

§ 3.4.8 The Contractor and its Subcontractors employed upon the Work will be required to conform with all labor laws and to all other laws, ordinances, and legal requirements now or hereafter applicable to the Work and/or the construction area.

§ 3.4.9 Employees of the Contractor or Subcontractors whose work is unsatisfactory to the Owner or the Engineer, or considered by them to be unskilled or otherwise objectionable, will be immediately dismissed from the Project upon notice from the Owner or Engineer. Those dismissed employees shall be immediately replaced by the Contractor so as not to delay progress of the work and at no additional cost to the Owner.

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

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

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

§ 3.4.13 Substitutions

1. § 3.4.13.1 Substitutions may be proposed by the Contractor after award of Contract if, and only if, all specified materials, products or equipment are removed from, or become unavailable in, the market place after execution of the Contract and only at “no change” or “credit” to the Contract Sum.

§ 3.4.13.2 By making requests for substitution based on Section 3.4.13.1 above, the Contractor (1) represents that it has investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; (2) represents that the Contractor will provide the same warranty for the substitution that the Contractor would for the specified; (3) certifies that the cost data presented is complete and includes all related costs under this Contract except the Engineer's redesign costs, and waives all claims for additional costs related to the substitution which subsequently becomes apparent; (4) represents that it will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects; (5) represents that it will reimburse the Owner for additional costs from claims by other Contractors resulting from incorporation of any requested substitution; and (6) represents that it will reimburse the Owner for all additional costs billed by the Engineer or its consultants for the review of the substitution request(s), any redesign of the Work of this Contractor or associated Contractors, additional site visits related to the substitution request and for the work to prepare Change Directives or Change Orders.

§ 3.4.13.3 Any request for substitution must satisfy these additional requirements:

- .1 The materials, products and equipment described in the Contract Documents establish the standard of required quality, function, dimension and appearance expected. Substitution requests will be considered only if these standards are met, or exceeded, and the Engineer and Owner subsequently approve the substitutions.
- .2 Each request for substitution shall be submitted on forms provided by the Engineer and shall include:
 - .1 the name of the material, product or equipment item for which substitution is requested and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for a complete evaluation; and
 - .2 a statement setting forth any changes in other materials, products, equipment or other Work that incorporation of the substitution would require, shall be included.
- .3 The burden of proof of the merit of the proposed substitution is upon the proposer.
- .4 The Engineer's decision of approval or disapproval of a proposed substitution shall be final and will be set forth in writing. Should the Engineer not approve the proposed substitution, the cost of the Engineer's and its consultant's review of any subsequent proposed substitutions for the material, product or equipment shall be deducted from the Contract Sum.
- .5 The Contractor shall represent and warrant to the Owner that any and all substituted materials are proper and appropriate for the purpose for which the Contractor intends to use them.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Engineer 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 with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. This warranty shall include all parts and labor both on and off the site, together with all necessary transportation and shipping charges. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor will be responsible for and shall make good any defects due to faulty materials for two (2) years and two (2) years on labor after final payment has been made, except where the Contract Documents call for a longer period of time. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of the Owner. If required by the Engineer, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract Documents. The Contractor shall perform the Work in strict accordance with the Contract Documents and best industry practices. All materials are to be new, unless specified otherwise. The Contractor, at its

expense, shall upon demand by the Owner or Engineer remove and replace materials not meeting specifications or materials failing to perform as represented or warranted by the manufacturer, regardless of whether incorporated into the Work. The Contractor shall promptly replace or correct any work or materials that the Owner or Engineer 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 otherwise prescribed by law.

§ 3.5.2 The Contractor warrants the Work and its performance to the Owner unconditionally. The Contractor shall perform all warranty obligations and responsibilities for the Work under the Contract Documents. The Contractor, at its own expense, shall remedy defects due to improper and/or defective workmanship or materials appearing within one year of the Contractor completing the Work or such longer period as may be set forth in the Contract Documents (the “Warranty Period”). Upon completion of the Work, the Contractor shall submit to the Owner all written warranties and guarantees from the Contractor’s 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 assigned to the Owner. The Contractor acknowledges that its obligations to the Owner under this Section 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 or Engineer regarding any deficiency in the Work covered by this Section shall toll the Warranty Period until all corrections or remedial actions necessary hereunder have been taken with respect to such deficiency. The Contractor shall be responsible for all harm, costs and expenses caused by its failure to maintain equipment and materials installed hereunder through the Contractor’s completion of the Project. The requirements of this Section shall continue notwithstanding the 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 otherwise prescribed by law.

§ 3.5.3 In emergencies occurring during the warranty/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 its forces arrive at the Work. Repair work not started within seven (7) days following notice to the Contractor of any defect may be considered an emergency.

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

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

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

§ 3.5.7 The warranty provided for in this Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy provided by law or required in the Contract Documents.

§ 3.6 TAXES

§ 3.6.1 Except as otherwise specified, the Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 Except as otherwise specified, all federal, state, and local taxes are to be included in the Contract Sum.

§ 3.6.3 Assessments and Taxes on Wages: Each Contractor shall pay and include in its proposal all costs and liabilities for the amounts assessed, or which may be assessed by the federal, state and local governments under any and all acts or laws upon the wages and salaries paid or to be paid all employees of the Contractor and its Subcontractors under this Contract.

§ 3.6.4 The Owner represents that it is an organization operated for purposes which make it exempt from New York sales and compensating use tax under Article 28 of the New York Tax Law. The Contractor is further advised that the Owner is exempt from payment of all state and local sales and compensating use taxes of the State of New York and its cities and counties on the Contractor's purchases of materials and supplies which are to be incorporated in and become integral component parts of the Owner's structures, buildings or real property, pursuant to the provisions of this Contract. Such taxes are not to be added to the Contract Sum, bid or costs to be reimbursed, as the case may be. This exemption does not, however, apply to tools, machinery, equipment or other property leased by or to the Contractor or a Subcontractor, or to supplies and materials which, even though they are consumed in the performance of this Contract, are not incorporated into the Owner's structures, buildings or real property. The Contractor and its Subcontractors shall be responsible for and shall pay any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment or other property and on all such unincorporated supplies and materials. The Owner shall deliver to the Contractor the appropriate exemption certificate required to be supplied by the Owner, and the Contractor, its Subcontractors, and materialmen shall be solely responsible for obtaining or delivering any and all exemption or other certificates and for furnishing a Contractor Exempt Purchase Certificate or other appropriate certificates to all persons, firms or corporations from whom the Contractor purchases supplies, materials and equipment for the performance of the Work covered by this Contract.

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

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 The Owner shall secure any necessary building permit. The Contractor shall secure and pay for all other permits and governmental fees, licenses, and inspections necessary for proper execution of and completion of the Contract that are legally required when bids are received. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also procure all certificates of inspection, use, other permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection and use shall be delivered to the Owner upon completion of the Work in sufficient time for occupancy of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum.

§ 3.7.1.1 The Contractor shall, as soon as practicable, furnish the Owner and Engineer with copies or certificates of all permits, fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all applicable building permits other than those required of the Owner under Sections 2.2.1 and 3.7.1. All inspection fees and other costs of such permits and licenses required to be obtained by the Contractor as may be imposed by any municipal or other entity shall be paid by the Contractor and shall not serve as the basis for any increase in the Contract Sum.

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

§ 3.7.3 If the Contractor performs Work that it knows or should know (in the exercise of good construction practice) is contrary applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear all costs attributable to the

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correction thereof or related thereto, including reimbursement to the Owner for any additional services required of the Engineer and fines and penalties, if any.

§ 3.7.4 Any nonconformity discovered by or made known to the Contractor, or which the Contractor reasonably should recognize before performing the affected portion of the Work, shall be reported promptly in writing to the Engineer. Any resulting necessary changes shall be accomplished by appropriate Modification. Failure by the Contractor under this section to promptly report any nonconformity with applicable laws, statutes, ordinances, building codes, and rules and regulations shall constitute a waiver by the Contractor of any claim that otherwise might result in a change in the Contract Sum or Contract Time.

§ 3.7.5 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 written notice to the Owner and the Engineer before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if the Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Engineer 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 Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If the Contractor disputes the Engineer's determination or recommendation, it may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum will be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, and reviews, or (2) inspections, tests, and reviews the Contractor had the opportunity to make or should have performed in connection with the Project.

§ 3.7.6 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 and Engineer. 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 The value of allowances shall also include: all plant, equipment and labor for handling and storage at the site; any costs for protection; all costs for associated demolition work; costs for removal and off site disposal of demolished materials; costs for labor, materials and equipment for installation and finishing, except where labor is specified not to be a part of the allowance; and other expenses required to complete the installation; 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, and

- 4 Contractor's overhead and profit, including costs for bonds and insurance, for these allowances shall be included in the costs or values of the General Requirements of the Contract Sum and not in the allowance.

§ 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 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. The Contractor's superintendent or responsible temporary substitute shall attend all job meetings.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Engineer the name and qualifications of a proposed superintendent. The Engineer or Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review. Failure of the Engineer or Owner to reply 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 or Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.3.1 Any proposed superintendent shall have qualifications that meet or exceed, at a minimum, the following qualifications before being considered by the Owner and Engineer: (a) five (5) years of experience as a superintendent in the particular construction discipline required by the Contract; (b) superintendent on at least two (2) construction projects equal to, or greater than, the Contract Sum for this Contract; and (c) superintendent on at least two (2) projects of similar construction types and procedures as this Project.

§ 3.9.4 The superintendent shall be on a full time basis in a managerial capacity to continuously expedite, direct, supervise and coordinate the Work and shall not normally engage in performing physical labor.

§ 3.9.5 The Contractor's superintendent shall have authority to make decisions pertaining to the Contractor's Work.

§ 3.9.6 Contractors that are awarded more than one trade contract shall provide a superintendent for each contract.

§ 3.9.7 The cost of the full time Contractor superintendent shall be included in the base bid for the duration of the Project from the notice to proceed until actual final completion and final payment.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly, but in no event later than 15 working days, after being awarded the Contract, shall prepare and submit for the Owner's and Engineer's information and 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 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.

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

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

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§ 3.10.2 The Contractor shall cooperate with the Owner and Engineer in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the construction or operations of the Owner's own forces.

§ 3.10.3 The Contractor shall conform to the most recent schedules.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed to the level of completion required of the Contract Documents or 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. The Contractor shall not be entitled to an adjustment in Contract Sum or Contract Time in connection with extraordinary measures required by the Owner.

§ 3.10.5 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Engineer's approval. The Engineer's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The submittal schedule is required to be updated and submitted bi-weekly.

§ 3.10.6 The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Owner or Engineer to conform to the Project schedule.

§ 3.10.7 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Engineer and incorporated into the approved Project schedule.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of appropriate final Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Engineer and delivered by the Contractor to the Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall also provide conformed construction drawings (As-Builts) per Section 01700 of the Specifications.

§ 3.11.2 The Contractor shall make all approved permit drawings accessible to governmental inspectors and other authorized agencies.

§ 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. The Shop Drawings shall include fabrication, erection, layout, and setting drawings and schedules, wiring and piping diagrams; and any other information required for proper approval of or installation of all parts of the Work specified. If any modifications are required to a standard item, such modifications shall be clearly shown or noted at the time of submission of Shop Drawings.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which 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 Engineer is subject to the limitations set forth in Section 4.2. Informational submittals upon which the and Engineer 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 or Engineer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Engineer, 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 or the Owner's own forces. The Contractor shall cooperate in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Contractors. All submissions shall be in accordance with Section 01300 Submissions.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Engineer 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. Contractor shall be responsible for verification of field dimensions and conditions and shall furnish such information to the Engineer when requested. Before Contractor proceeds with the Work in question, the Contractor should field verify all dimensions. In case of doubt about deminsions, Contractor should notify the Engineer immediately for instructions.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the Engineer.

§ 3.12.8 The Work shall be in accordance with reviewed submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and (1) the Engineer has taken appropriate action and has submitted written notification thereof for 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 Engineer's review thereof.

§ 3.12.8.1 Equivalent Products: Whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturer's or vendor's names, trade names, catalog numbers, or the like, it is so identified for the purpose of establishing a standard. If Bidder or Contractor wishes to use any material, article, or piece of equipment by another manufacturer or vendor, which the Contractor believes will perform adequately to satisfy the general design and will provide equal or better substance, appearance and performance, such product will be reviewed by the Engineer when a written request is submitted in accordance with the Specifications. Any proposed product to be substituted shall not be purchased or installed by the Contractor without the Engineer's review process having been completed and the product accepted by written notification.

§ 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 Engineer on previous submittals. In the absence of such written notice, the Engineer's review 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. 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 Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional, and who will comply with reasonable requirements of the Owner regarding qualifications and insurance. 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 Engineer. The Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Engineer will review, approve or take other appropriate action on submittals for the purpose of determining whether or not the Work, as proposed in the submittals, will be in compliance with the requirements of the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 Samples shall be properly labeled, giving the following information as applicable: (a) Project name and location; (b) Name, finish, and composition of material; (c) Location where material is to be used; (d) When approved, samples shall be so indicated; and (e) Labels shall be large enough for approval stamp.

§ 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, and 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 Owner or Engineer before using any portion of the site.

§ 3.13.3 The Contractor shall perform and shall ensure that all Subcontractors and suppliers perform all Work in a manner that permits reasonable access to the Project site and to all adjacent premises. The Contractor shall not, and shall not permit any Subcontractor or supplier to, conduct the Work in a manner that disturbs or that could be reasonably anticipated to disturb operations and persons located in or on portions of the site not affected by the Work.

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

- .1 Smoking is prohibited anywhere on Owner property. Violators will be subject to arrest and/or fine as set forth under applicable law. No alcoholic beverages or controlled substances are permitted on Owner property, and persons under the influence of alcoholic beverages or controlled substances may not enter in or remain on Owner property.
- .2 No firearms are permitted on Owner property, and no firearms shall be brought on Owner property without the Owner's express prior consent.
- .3 Appropriate protective gear (hard hats, safety shoes, goggles, etc.) are to be worn as required by OSHA standards, the New York State Department of Labor, and prudent practice. Shirts are to be worn at all times. No short pants are permitted.

- .4 Any person who uses inappropriate language, or who is disruptive to the library environment, will be banned from the site.
- .5 Contractor personnel shall not converse with library employees or patrons, except as expressly permitted by Owner.
- .6 All persons on the Project site will comply with all reasonable instructions regarding conduct and safety which are given by the Engineer or library administrators.
- .7 Intentionally Omitted.
- .8 Intentionally Omitted.
- .9 Intentionally Omitted.
- .10 To gain access to the Work, entrances and parking areas will be designated by the Owner for the Contractor's use. Any vehicles or trucks in non-designated areas may be towed at the Contractor's expense.
- .11 Intentionally Omitted.
- .12 Intentionally Omitted.
- .13 No asbestos containing products are to be used anywhere on this Project.
- .14 No lead containing products are to be used anywhere on this Project.
- .15 Asbestos manifests showing the locations of all known asbestos bearing materials are available in each building, and should be consulted prior to the commencement of any work, including but not limited to demolition.
- .16 Demolition is to occur only when the building is unoccupied. Dust partitions and negative air are to be installed prior to commencing demolition. The Contractor must obtain Engineer approval on dust partitions and negative air prior to commencing demolition work. Debris shall be removed by using an enclosed chute or similar sealed system.
- .17
 - (a) Prior to the commencement of work, the Contractor must submit construction plans, which show the location of dust particles, exhaust & fresh air fans and describe in detail the operation procedures during demolition and construction which may generate dust.
 - (b) All entrances to rooms in the building shall be sealed with at least 6 mil. polyethylene sheeting to prevent dust created by demolition and construction work from entering the classrooms. Entrances and egress to the work zone shall be covered with a triple flap 6 mil. polyethylene doorway to allow access to the area without the release of dust. Contractors are additionally responsible for all debris and dust infiltrating adjacent and undisturbed areas of the building.
 - (c) Shut down and lock out all electrical and HVAC in the work area. Cut, cap, and seal all duct work where it enters the work area from another space. All duct work and conduit within the space shall be removed during demolition work.
 - (d) The Contractor shall install dust protection barriers and poly sheeting. There shall be no or minimum damage to adjacent surfaces. The Contractor is responsible to repair any damage to existing surfaces.
- .18 Painting or other chemical applications shall be done in the existing building only when it is unoccupied. Storage of chemicals and painting shall be outside the existing or new structures, and shall follow manufacturer's storage guidelines.
- .19 Oxygen or other gas containers shall be properly stored and secured per OSHA requirements, to the satisfaction of the Owner and Engineer. Failure to do so will result in a \$250 backcharge, per occurrence.
- .20 Each Contractor is responsible for cleaning its own materials and debris. Failure to maintain a clean work site daily will result in others performing the work at the Owner's request, and the Contractor will be backcharged for the cleaning cost plus construction administration fees. This may be done without the typical 3-day notice to Contractor(s).
- .21 Each Contractor must send a qualified representative, knowledgeable in the Project and authorized to make decisions on behalf of the Contractor, to every Project meeting.
- .22 The Contractor shall cooperate with the library administrators and custodial staff, however, if any additional work is requested the Contractor shall not proceed unless written approval is received from the Owner or Engineer. The contractor will not be compensated for any additional work performed without the Owner's or Engineer's prior written approval.
- .23 Deliveries sent to the library will not be signed for or unloaded by the Owner. They will be directed to the Contractor and, if no employee is on site, the delivery will be rejected, at the Contractor's expense.

- .24 The General Trades Contractor shall be responsible for managing dust and dirt. On the exterior, site shall be watered down frequently to prevent dust clouds from rising. Streets shall be maintained clean per the Owner's or Engineer's request.
- .25 Intentionally Omitted.
- .26 Each Contractor shall submit a weekly work schedule indicating work days, work hours and manpower allocation.
- .27 No storage of materials will be permitted within the buildings at any time during construction. Contractors must provide exterior storage containers when required. Final location of storage containers shall be determined by the Owner and/or Engineer.
- .28 The General Trades Contractor shall be responsible for maintaining all appropriate site safety signage.
- .29 Contractors shall be responsible for protecting Owners property. All existing shrubs, trees, lawn fixtures, sculptures and miscellaneous equipment shall be protected at all times. Any removals or relocation of said objects, if allowed shall be as directed by Owner and/or Engineer.
- .30 The General Trades Contractor shall provide and service now fewer than four (4) portable lavatories for the duration of construction. Lavatories shall be serviced by the General Trades Contractor on a regular basis to maintain sanitary conditions.
- .31 The General Trades Contractor shall protect all existing roofs during construction and shall be responsible for any damage to roofs during construction. The General Trades Contractor shall make all repairs to any damaged areas, as required by the manufacturer of the roof system.
- .32 The General Trades Contractor shall be responsible for providing weather-proof protection over all rough openings, including windows.
- .33 All Contractors shall be responsible for conducting pre-construction walk-throughs and video taping existing conditions. Mandatory walk-throughs shall be pre-scheduled through the Engineer, and shall have the Owner, the Engineer, and the Contractor present. Failure to do so will result in Owner arranging for these services and backcharging Contractor for all related costs.
- .34 Manufacturers Material Safety Data Sheets (MSDS) shall be available at the site for all products used in the Project.
- .35 No weapons are permitted on the Owner's property.
- .36 No Contractor, Subcontractor, nor any person on its behalf shall, in any manner, engage in discrimination, intimidation or harassment of any person on the Project site.
- .37 Proper attire is required for personal safety and clothing must not sexually explicit or contain messages of a vulgar nature, disrespectful of ethnic or religious groups, or which promote the use of tobacco, alcohol or drugs.
- .38 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.
- .39 The Contractor will ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work will be performed in such a manner that public areas adjacent to the site of the Work will be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor will use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work; or (2) the building in the event of partial occupancy, as more specifically described in Section 9.9.
- .40 All Contractors are required to protect their own Work and work areas, preconstruction, during construction and post construction.
- .41 Without limitation of any other provision of the Contract Documents, the Contractor will comply with all reasonable rules and regulations promulgated by the Owner or Engineer in connection with the use and occupancy of the Project site and the Buildings, as amended from time to time by the Owner or the Engineer

§ 3.13.5 Use of Buildings. Each Contractor shall cooperate with the Owner in making available for the Owner's use portions of the completed or partially completed buildings as provided for in Section 9.9. Such use shall not constitute acceptance thereof. Such occupancy shall in no way abrogate any specified warranties or guaranties for materials, workmanship or operation of equipment pertaining to the occupied portions. Each Contractor shall

cooperate with the Owner in making available for the Owner's use such building services as heating, ventilating, cooling, water, lighting and telephone for the space or spaces to be occupied, and if the equipment required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid space or spaces, the Contractor shall make every reasonable effort to complete such part of its Work as soon as possible to the extent that the necessary equipment can be put into operation and use. Mutually acceptable arrangements shall be made as to the warranties or guaranties affecting all Work associated therewith. Such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Such occupancy shall be documented with an appropriately executed Certificate of Substantial Completion.

§ 3.13.6 The Contractor shall assure free, convenient, unencumbered and direct access to properties neighboring the Project site for the owners of such properties and their respective tenants, agents, invitees and guests.

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

§ 3.13.8 No signs or advertising material will be permitted on the Project site.

§ 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 and patching shall be restored to the condition existing prior to the cutting, fitting and 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 or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 The word "new" used herein shall mean Work which has been or is to be installed under the terms of the Contract for this Project. The word "existing" used herein shall mean existing conditions previous to the award of a Contract for this Project. In order to eliminate cutting and patching as much as possible, each Contractor shall, during the progress of the Work, provide and set proper sleeves, inserts, and other fixtures as required for its new Work and shall give proper and detailed instructions to others where Work may be affected by their Work, with adequate notice prior to the erection of new Work. Cutting and patching Work as required to install new Work or remove existing Work shall be done carefully and neatly with as little damage as possible. Each Contractor should refer to the Specifications for proper cutting and patching requirements. Any costs caused by defective or ill-timed Work shall be borne by the Contractor responsible therefor. Any Contractor which is required to cut and patch its new Work to provide conditions for other Contractors to complete their new Work and which was not given adequate prior notice of the conditions required for the completion of such Work before doing its Work shall charge the Contractor in default the documented cost of the cutting and patching Work plus fifteen percent (15%) for overhead and profit unless otherwise specified. Cutting and patching of any Work shall be made in such a manner as to not breach any provisions of any guaranty or warranty on existing Work left in place or any guaranty or warranty required for the Contractor's new Work. Patching of Work shall match existing adjacent surfaces and patchwork shall be disguised completely to hide any trace of patching. All new Work on existing roofs must be provided by a company specializing in performing the Work and approved by the existing roofing material manufacturer. It shall be the responsibility of the Contractor performing the cutting and patching to maintain any existing roofing warranty.

§ 3.15 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. The Contractor shall completely clean the site of the Work, removing and disposing of all construction-related debris and rubbish, and cleaning all Work-related stains, spots, marks, dirt, mortar smears, plaster smears, paint smears, caulking smears, and other foreign materials from exposed surfaces inside and outside the buildings and within the Project limit lines.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may, upon five (5) days written notice, do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and Engineer access to the Work in preparation and progress wherever located. Federal, state, and local agencies with jurisdiction over the Project shall at all times have access to the Work wherever it is in preparation or progress. The Contractor shall provide for such access so that such agencies may perform their functions.

§ 3.16.2 The Contractor shall allow access for all required tests and inspections.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Engineer harmless from loss on account thereof, but shall not be responsible for such 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 or Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer and the Owner.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Engineer, and Engineer's consultants, and agents and employees of any of them (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, 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 including loss of use) caused in whole or in part 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's indemnity obligations under this section 3.18.1 shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Indemnitees under any applicable statute, rule, or regulation including but not limited to any New York Statute, Occupational Safety and Hazardous Act, and the Federal Occupational Safety and Hazardous Act. In claims against any person or entity indemnified under this section 3.18.1 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 this 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' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.1.1 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, the Subcontractor shall defend, indemnify, and hold harmless the Owner, Engineer, and their consultants, agents, and employees of any of them (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, 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 including loss of use), caused in whole or part by the negligent acts or omissions of the Subcontractor, its Sub-Subcontractor(s), 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 herein. The Subcontractor's indemnity obligations under this section shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Indemnitees under any applicable statute, rule, or regulation including but not limited to any New York Statute, Occupational Safety and Hazardous Act, and the Federal Occupational Safety and Hazardous Act. In claims against any Indemnitee by an employee of the Subcontractor, one of its Sub-Subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the foregoing indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Subcontractor or its Sub-Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts."

§ 3.18.1.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 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.

§ 3.18.1.3 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Indemnitees from and against any and all claims, damages, losses, suits, obligations, fines, penalties, costs, charges, and expenses, including but not limited to attorneys' fees, which may be imposed upon or incurred by or asserted against any of them by reason of any act or omission of such Contractor, or any of its Subcontractors, or any person or firm directly or indirectly employed by such Contractor, for the act(s) and/or omission(s) of any Contractor or Subcontractor in connection with the work of the Project.

§ 3.18.2 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.

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

§ 3.18.4 Intellectual Property. The Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against any claim or demand for patent fees, royalties, or otherwise on account of any invention, machine, article, process, copyright, or arrangement that may be used by the Contractor in performing the Work, other than as to any of the foregoing expressly called for in the Contract Documents to be so used. In the event of any injunction or legal action regarding such claim or demand that results in stopping the Work in whole or part, the Owner shall have the right to direct the Contractor to change the manner of performance of the Work to avoid such stoppage, all cost and expense occasioned thereby to be borne solely by the Contractor.

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

§ 3.18.6 Subject to Section 3.18.7, all obligations of the Contractor under this Section 3.18 to defend the Indemnitees are obligations to provide full defenses at the sole cost and expense of the Contractor, regardless of any alleged culpability on the part of any Indemnitee or any ultimate determination of relative shares of liability of any Indemnitee or limitation of the Contractor's indemnity obligations in light of such determination.

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

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

§ 3.19 Existing Features and Underground Data

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

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

§ 3.20 Construction Stresses

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

§ 3.20.2 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 this Agreement.

§ 3.21 Training and Instructions

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

ARTICLE 4 ENGINEER

§ 4.1 GENERAL

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

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

§ 4.1.3 If the employment of the Engineer is terminated, the Owner shall employ a successor Engineer as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Engineer.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Engineer will provide administration of the Agreement as described in the Contract Documents and will be an Owner's representative during construction until the date the Engineer issues the final Certificate For Payment. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Engineer 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 Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer 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, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 The Contractor shall participate with other Contractors and the the Engineer and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall constitute the schedules to be used by the Contractor, other Contractors, the Engineer, and the Owner until subsequently revised.

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

§ 4.2.6 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.6.1 Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6.2 The Engineer and the Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer or the Owner considers it necessary or advisable, the Engineer or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Engineer 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 Engineer's action will be taken in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals 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 Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under Article 3. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.7.1 The Engineer's review of Contractor's submittals shall be limited to an initial submittal and one (1) resubmittals. If the Engineer is required to review additional submittals because the initial submittal and one (1) resubmittals failed to conform to the information given and the design concept expressed in the Contract Documents, the amount of compensation paid to the Engineer by the Owner for additional services shall be deducted from the payments to the Contractor.

§ 4.2.7.2 The review will not be considered complete until an "ACTION" stamp or other written notice to that effect has been received by the Contractor.

§ 4.2.8 The Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Article 7. The Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Article 3.

§ 4.2.9 The Engineer and the Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Engineer agree, the Engineer will provide one or more project representatives to assist in carrying out the Engineer's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

§ 4.2.12 Interpretations and decisions of the Engineer 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 Engineer 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 rendered in good faith.

§ 4.2.13 The Engineer's decisions on matters relating to aesthetic effect, after consultation with the Owner, will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Engineer will review and respond to requests for information about the Contract Documents. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Engineer 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 a separate contractor or subcontractors of a separate contractor.

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner through the Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to any such proposed person or entity or (2) that the Engineer requires additional time for review. Failure of the Owner or Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.1.1 Subcontractors will not be acceptable unless, when requested by the Engineer or Owner, evidence is furnished that the proposed Subcontractor has satisfactorily completed similar subcontracts as contemplated under this Contract and has necessary experience, personnel, equipment, plant, and financial ability to complete the subcontract in accordance with the intent of the Contract Documents.

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

§ 5.2.1.3 Refer to Instructions to Bidders, Section 4, for requirements for delivery of "Contractor's Subcontractor List" to Engineer's office after receipt of bids before award of the Contract.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Engineer 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 Approval of a subcontractor may be revoked or withdrawn, if, in the opinion of the Engineer, such subcontractor evidences an unwillingness or inability to perform its Work in strict accordance with the Contract Documents.

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

§ 5.2.5 The Contractor shall provide the Owner with a complete copy of each Subcontract for Subcontractors and material suppliers in excess of \$5,000.00.

§ 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, which the Contractor, by these Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into

similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontract shall contain provision for execution of lien waivers in form and substance acceptable to the Owner as a condition of payment by the Contractor. The Contractor shall require each Subcontractor to (1) inspect the Project site, including all relevant surfaces and job conditions, before beginning the Work and (2) accept or cite necessary corrections in the Project site, including surfaces or job conditions, before beginning the Work.

§ 5.3.1 The form of subcontract used by the Contractor shall be subject to the review and approval of the Owner. Without limiting the generality of the foregoing, the Contractor shall include the following provisions in each of its subcontracts:

- .1 an agreement by the Contractor and Subcontractor that the Owner is an express third party beneficiary of the subcontract, entitled to enforce any rights thereunder for its benefit; and
- .2 a provision that the Subcontractor shall assume toward the Contractor all of the obligations that the Contractor assumes toward the Owner under the Contract Documents; and
- .3 an agreement by the Subcontractor to obtain and carry the insurance required under the Contract Documents (including, without limitation, the waiver of subrogation).

§ 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 Agreement by the Owner for cause pursuant to Section 14.2 or stoppage of the Work by the Owner pursuant to Section 2.3 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; 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 [Intentionally Omitted].

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

§ 5.5 Owner's Right to Contact Subcontractors. The Owner may, at its discretion, furnish to any Subcontractor information regarding the Contractor's Application for Payment and the amounts actually paid by the Owner to the Contractor on account of the Work done by the Subcontractor.

§ 5.6 Payments to Subcontractors; Release of Liens and Claims. The Contractor shall pay each Subcontractor in accordance with subparagraph 9.6.2. The Contractor shall require each Subcontractor to submit with each application for payment a Release of Liens and Claims in a form approved by the Owner. The Owner shall have no obligation to pay, or to see the payment of any monies to any Subcontractor.

§ 5.7 No Relationship with Subcontractors. Nothing contained in this Agreement shall be deemed to create any contractual relationship between the Owner and any Subcontractor or to create rights in any Subcontractor against the Owner. The Contractor shall promptly advise the Owner of any claim or demand by a Subcontractor claiming

that any amount is due to such Subcontractor or claiming any default by the Contractor in any of its obligations to such Subcontractor.

§ 5.8 Discharge of Construction Liens. If any of Contractor's Subcontractors or sub-subcontractors file a construction lien against the Property, the Contractor shall within five (5) days of receipt of notice from the Owner, cause any such liens to be released by procuring and recording a bond or otherwise arrange for the removal of the lien. If the Contractor does not cause the lien to be released and discharged or removed, the Owner shall have the right to pay all sums necessary to obtain such a release and discharge, and to cause the costs it incurs in doing so (including reasonable attorneys' fees) to be paid by the Contractor. The Contractor shall indemnify, defend, and hold harmless the Owner from all claims, losses, demands, and causes of action or suits of whatever nature, including with respect to attorneys' fees incurred by the Owner, arising out of any such lien. Contractor's obligation to indemnify in this paragraph shall be in addition to Contractor's obligations to indemnify set forth elsewhere in this Agreement.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE 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 to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Agreement identical or substantially similar to these including those portions related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.2.1 The Contractor shall provide for coordination of its activities with the activities of each Prime Contractor. This includes, but is not limited to, the Owner's own forces of separate Contractors employed directly by the Owner.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Agreement, 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 and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Engineer and the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.2.1 Each Contractor shall promptly correct discrepancies or defects in their Work identified by other Contractors as affecting proper execution and results of the Work of the other Contractor.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor 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 a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5. The Contractor shall also promptly correct discrepancies or defects in its Work identified by the Owner or separate contractors as affecting proper execution and results of the Work of the other separate Contractors.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.5.1 Claims and other disputes and matters in question between the Contractor and other separate Contractors shall be subject to the provisions of Article 15.

§ 6.2.6 Should the Contractor or its Subcontractors cause damage to the Work or property of any separate Contractor or other Contractor, the Contractor shall, upon due notice, promptly attempt to settle by agreement or otherwise resolve the dispute with the separate Contractor or other Contractor. If such separate Contractor or other Contractor sues or makes any other claim against the Owner or Engineer on account of any damage alleged to have been caused by the Contractor or its Subcontractors, the Owner or Engineer shall notify the Contractor, and the Contractor shall defend, indemnify, and hold harmless the Owner and Engineer against such claim or proceedings at the Contractor's own expense in accordance with Section 3.18.

§ 6.2.7 All required cutting, patching, and restoring shall be neatly done by mechanics skilled in their specific trades, to the satisfaction of the Engineer.

§ 6.2.8 The Contractor shall leave all Work of his trade WHOLE, PERFECT, AND COMPLETE at the final completion of the Work..

§ 6.2.9 The Contractor shall provide for coordination of its activities with the activities of each separate Contractor. This includes, but is not limited to, the Owner's own forces of separate contractors employed directly by the Owner.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate 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 Engineer 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 Agreement, and without invalidating the Agreement, 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, Contractor and Engineer and shall be memorialized in a format approved by the Owner; a Construction Change Directive requires agreement by the Owner and Engineer 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 Engineer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Additional work performed without authorization of a Change Order will not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time. No course of conduct or prior dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or

not there is, in fact, any unjust enrichment of the Owner, shall be the basis for any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.4 Costs for changes in the Work shall not be allowed in excess of usual rentals charged in the area where the Project is located for similar equipment of like size and condition, including costs of necessary supplies and repairs for operating equipment on site in connection with other work unless its use incurs actual and additional costs to Contractor. If equipment not on Site is required for change in work only, cost of transporting equipment to and from Site will be allowed.

§ 7.1.5 Lump Sum quotations shall be properly itemized and supported by sufficient substantiating data, including but not limited to material descriptions, material quantities, material unit prices, labor trade listings, labor hour quantities, labor trade rates, equipment descriptions and equipment rates with a percentage allowance for overhead and profit as set forth in Section 7.3.11.

§ 7.2 CHANGE ORDERS

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

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

§ 7.2.1.4 Changes in the Work involving additional Work or deletion of Work effecting an addition to or subtraction from the Contract Sum shall not be made until the Contractor submits to the Engineer the cost of the added or deleted Work with a complete and detailed listing of all Subcontractors involved, all materials, labor, overhead and profit and an appropriate Change Order has been issued. If requested, the Contractor shall submit detailed quotations for Subcontractors and material suppliers. Changes in the Work when not involving additions or deletions from the Contract Sum shall not be made until the Engineer has issued an appropriate Change Order. **ALL CHANGE ORDERS MUST HAVE THE APPROVAL OF THE OWNER AND ENGINEER IN WRITING.**

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all 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.

§ 7.2.4 Additional work performed without authorization of a Change Order will not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time, except as provided in Section 7.3, and except in the case of an emergency as provided in Section 10.4.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Engineer and signed by the Owner and Engineer, 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 Agreement, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .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, subject to the limitations of Section 7.3.11; or
- .4 As provided in Section 7.3.7, subject to the limitations of Section 7.3.11.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.4.1 Unit Prices: Unit prices shall be submitted in the Bid Form for various items set forth therein. Unit prices set forth shall be used to determine equitable adjustment of the Contract Sum in connection with extra Work or Work omitted or reduced by the Engineer. The unit prices quoted shall include all labor, materials, equipment, overhead, bonds, insurance, applicable taxes and profit and shall apply to all Work added. Work deducted shall be at unit prices quoted. If any one of the unit prices quoted by a Contractor is excessively high in the opinion of the Engineer, the Owner and Engineer will have the right to adjust such unit price to a fair and reasonable figure before signing of the Agreement.

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

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Engineer shall determine the method and 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 computed in accordance with Section 7.3.11. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- .2 Actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

§ 7.3.7.5 Where quoted unit prices are not applicable and the extra cost is to be determined under Section 7.3.3.3, the allowance above actual cost for overhead and profit shall be as specified in Section 7.3.7.2.

§ 7.3.7.6 Labor costs shall include items incidental to labor such as workmen's compensation insurance, social security, fringe benefits and all mandatory costs paid in connection with labor. Overhead shall include insurances other than those mentioned above, premiums on bonds required by the Contract, Contractor's supervisory employees, general office expense and small tools. Detailed estimate breakdown quotations shall be provided.

§ 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 without markup. 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 cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Engineer. 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

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Engineer 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 Engineer will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The limit for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, maximum of five percent (5%) of the amount due between Contractor and Subcontractor. For the Subcontractor, for Work performed by the Subcontractor's own forces, ten percent (10%) of the cost.
- .3 The markup on any part of the Work a Subcontractor subcontracts will be limited to one overhead and profit figure, in addition to the Contractor's overhead and profit markup. The Subcontractor and Sub-subcontractor may divide the overhead and profit amount as they agree upon.
- .4 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7.
- .5 In order to facilitate checking of quotations for extras and credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and Subcontracts. Labor and material shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also.
- .6 Overhead and profit shall include, but not be limited to, the following:
 - .1 home office expense;
 - .2 field office expense;
 - .3 supervision;
 - .4 project management & estimation; and
 - .5 small tools & equipment.

§ 7.3.12 When either the Owner or the Contractor or both do not agree with the determination made by the Engineer concerning the adjustments in the Contract Sum and Contract Time, such disagreement shall be resolved in the manner prescribed by Section 15.

§ 7.4

If the Contractor wishes to make a claim for a change in the Work, it shall give the Owner written notice thereof within seven (7) days of the event giving rise to the claim or the change in the Work. The notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed with the Work and may pursue a claim in accordance with the terms of this Agreement. Written approval of the Owner is an absolute condition precedent to any payment for any change in the Work and proceeding on oral orders is a waiver by the Contractor of any claim for compensation for any such changes in the Work done without such prior written approval.

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.

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§ 8.1.3 The date of Substantial Completion is the date certified by the Engineer 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.

§ 8.1.5 The date of final completion of the Work shall be the date on which the Contractor has finally completed satisfactorily all the Work required of the Contractor under and in accordance with the Contract Documents.

§ 8.1.6 Work remaining to be completed after Substantial Completion, shall be limited to items which can ordinarily be completed within thirty (30) day period (one month) before final payment is made.

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.1.1 The Contractor recognizes that the Project Schedule is of critical importance to the Owner. All aspects of construction must reflect a "time is of the essence" construction strategy. The "Bid Schedules" serve as a guide of critical milestone dates to the Project. Failure to meet intermediate milestone dates will jeopardize the overall Project Schedule. If the Contractor's performance of the Work evidences, to the Owner or Engineer, that the completion day may be in jeopardy, this will mandate Contractor(s) to increase staff, work overtime, or use other means to recover time, at the costs of those Contractor(s) responsible for such delays. In addition, all costs due to delays in completion of the Work shall be borne by Contractor(s) responsible for delays..

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Work can not start until required insurance and bonds are provided and the Contract has been executed.

§ 8.2.2.1 Contractor shall not commence Work at the Project site until two (2) certified copies of all insurance policies as indicated in Article 11, attesting that the required coverages are in force, have been accepted by the Owner and the Owner's insurance carrier.

§ 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 shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified and, further, to provide such protections as may be necessary. It is expressly understood and agreed by the Contractor that the time for the 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.

§ 8.2.3.1 If the Contractor is not maintaining the pace of the Work in accordance with the approved construction schedule or otherwise consistent with the Contract Time, and such delays are not excusable as set forth in Section 8.3, then the Owner may require the Contractor to undertake a time recovery plan (including more personnel, overtime and/or additional shifts) at the Contractor's sole expense, to reasonably assure Final Completion of the Work within the Contract Time.

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

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

§ 8.2.5 If the Contractor does not achieve Substantial Completion within the Contract Time required by the Agreement between the Owner and Contractor, the Contractor shall be responsible for the cost of reimbursement of the Owner for payments made to the Engineer for services rendered from the end of the Contract Time established in the Agreement until Substantial Completion is achieved. If the Owner is required to pay the Engineer in accordance with its agreement with the Engineer, the Owner will back-charge the Contractor.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner's own forces, the Engineer, any of the other Contractors or an employee of any of them, or by changes ordered in the Work, or by fire, extraordinary delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by other causes which the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if 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 a delay will occur, and (3) is of a duration of more than one (1) day. Nothing contained herein shall be construed to provide for payment of compensation of any kind to the Contractor for damages due to hindrance or delay from any cause in the progress of the Work. The Contractor shall not be entitled to compensation for consequential damages, lost profits, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work. The extension of time provided under this Section 8.3.1 shall be the Contractor's exclusive remedy.

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

§ 8.3.1.2 An extension, or extensions, of time may be granted subject to the provisions of this Section, but only after written application therefore by the Contractor.

§ 8.3.1.3 The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently; but if at all, only the actual period of delay as determined by the Engineer.

§ 8.3.1.4 An application for extension of time must set forth in detail the nature of each alleged cause of delay, the dates upon which such cause of delay began and ended, the number of days attributable to each of such causes, and the probable effect such causes on the previously approved progress schedule.

§ 8.3.1.5 Failure to strictly comply with these requirements may, at the discretion of the Owner, be deemed sufficient cause to deny any requested extension of time.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of this Agreement. A copy of any Claim for extension of time shall be delivered to the Owner and the Engineer, and the Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay to the Owner.

§ 8.3.3 An extension of the Contract Time shall be the sole remedy of the Contractor for the delays noted in 8.3.1. In such cases, the Contractor shall not be entitled to compensation for consequential damages, lost profits, lost opportunity costs, impact damages or other similar remuneration. In no event shall the Contractor be entitled to monetary damages for delay under the Contract. The Owner's exercise of any of its rights or remedies under the

Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

§ 8.3.4 Delays which affect the scheduled completion of the Work and are attributable to interference between Contractors, Subcontractors, suppliers, utility companies or municipalities, shall be compensated solely by the granting of an extension of time to the Contractor by the Owner to complete the Work without charges to the Owner. The time necessary for review of shop drawings, delays incurred by seasonal limitations and other administrative processing by all parties involved should be anticipated by the Contractor and are not compensatory. The Contractor agrees that the Contract Sum includes and reflects the additional cost of doing work under this Contract caused by interference of other Contractors, etc. and the other non-compensatory delays described above.

§ 8.3.5 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.

§ 8.3.6 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

§ 8.3.7 To the extent the Contractor is required to work during overtime hours, weekend, holidays, or at other times which are not regularly scheduled, due to the fault of the Contractor, the Contractor shall be responsible for the costs incurred by the Owner or Engineer attributable to working during periods which have not been ordinarily scheduled. To the extent the Contractor elects to work during these periods to facilitate the schedule, the Owner may, at its sole option, allow the Contractor to do so without the Contractor incurring the additional costs referenced above.

§ 8.3.8 This project is to be physically completed within the Contract Time. Liquidated damages will be assessed in the amounts specified below for each and every calendar day after such time allowed for Substantial Completion.

Total dollar amount of the contract is:	Assessed amount of liquidated damages per day:
Under \$50,000	\$100 per day
\$50,001 - \$100,000	\$250 per day
\$100,001 - \$500,000	\$500 per day
\$500,001 - \$1,000,000	\$750 per day
\$1,000,001 - \$5,000,000	\$1,000 per day
Above \$5,000,001	\$1,500 per day

Contractor realizes that time is of the essence on this Contract and the completion dates and, where applicable, milestone date for eachwork item in the Project Schedule, or the date of Substantial Completion shall be no later than the date indicated in these Documents. In the event the Contractor fails to complete any work or substantially complete the work under this Contract by said schedule date, the sum per calendar day for each date not met, as delineated above, will be subtracted from the payment due the Contractor (or, if the amount due the Contractor as payment is insufficient, any deficiency shall be paid by the Contractor to the Owner), except in cases where a delay is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including acts of God, or of the public enemy, acts of the Government, in either its sovereign or contractual capacity, fires, flood, epidemics, quarantine restrictions. Freight embargoes will not constitute a delay excusable under this provision unless approved by the Owner in writing.

Within five (5) calendar days from occurrence of any such delay, the Contractor shall notify the Owner in writing of the cause of delay. The Owner will ascertain the facts and extent of the delay, and extend the time for completing the Work when in its judgment the findings of fact justify such an extension. Owner's finding of fact will be final and binding in litigation.

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

In addition to Liquidated Damages, the Contractor shall be liable for all additional costs incurred by the Owner to provide staff, Engineer's personnel as required to make facility accessible by Contractor and perform inspections during such off hours. In the event that Substantial Completion date is not met, inspections will be performed once each week unless the Owner or the Engineer determine, at their sole discretion, that additional inspections are needed. All costs incurred by the Owner and the cost of additional inspections, at the rate of One Thousand Dollars (\$1,000) per inspection, will be subtracted from the payment due the Contractor. If the amount due the Contractor for payment is insufficient, any deficiency shall be paid by the Contractor to the Owner. To the extent the Contractor is required to work during overtime hours, weekend, holidays, or at other times which are not regularly scheduled, due to the fault of the Contractor, the Contractor shall be responsible for the costs incurred by the Owner and the Engineer attributable to working during periods which have not been ordinarily scheduled. To the extent the Contractor elects to work during these periods to facilitate the schedule, the Owner may, at its sole option, allow the Contractor to do so without the Contractor incurring the additional costs referenced above.

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 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor if and for so long as the Contractor fails to perform any of its obligations under any of the Contract Documents; provided, however, that any such holdbacks shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any default or failure of performance by the Contractor.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 The Contractor shall submit to the Engineer a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as described in Section 9.2.2 below. This schedule, unless objected to by the Engineer or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.2 Each Contractor will be required to submit in triplicate to the Engineer within twenty-one (21) calendar days from the date of award of the Contract the schedule of values using the Engineer's Payment Application form. The list of items shall include all items included in all divisions and sections of the Specifications. The Contractor shall maintain and keep current all changes to the schedule of values caused by Change Orders, Construction Change Directives or other authorized changes. Such revised schedule of values shall be presented monthly with the Application for Payment. The following items shall also be listed separately as line items (with their respective values): (1) performance, payment bonds, and Project insurance; (2) field supervision and layout; (3) submittals and shop drawings; (4) temporary facilities; (5) operations and maintenance manual (including construction record drawings); (6) as-built drawings; (7) Project close-out; (8) cleaning-up; (9) each allowance associated with the Contract; (10) each Alternate accepted; and (11) each Change Order as it is issued.

§ 9.2.2.1 Each Contractor shall submit a separate Schedule of Values for each building or facility to which its Contract applies, showing the facility name and SED project number. To these schedules a summary sheet for the Contract value shall be attached.

§ 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 Engineer an itemized Application for Payment prepared in accordance with the schedule of values, notarized and reflecting retainage as provided elsewhere in the Contract Documents. Applications for Payment will be in the form of AIA Document G702, accompanied by an appropriate AIA "Continuation Sheet," and must include (add and/or deduct) adjustments to the Contract Sum resulting from Work performed under approved Change Orders (specified under Article 7) and shall be shown separately on the application for previous and current periods. Each Application and Certificate of Payment shall be accompanied by two (2) copies of the Pay Application Lien Waiver and Release.

Each Application for Payment shall be prepared in such form and supported by such data to substantiate the Contractor's right to payments as the Owner and/or Engineer may require such as copies of requisitions from

Subcontractor and material suppliers. Each Application for Payment forwarded to the Owner by the Engineer shall be subject to audit and approval by the Owner in accordance with the Owner's normal audit procedures. The Application for Payment must be accompanied by: (a) a current contractor's lien waiver; (b) duly executed waivers of public improvement liens from all subcontractors and material suppliers representing satisfaction of payment of all amounts requested by the Contractor on behalf of such entities in any previous application for payment; (c) certified payroll for all employees of the Contractor and employees of subcontractors performing Work on the Project; (d) for contracts of \$250,000 and more, all Contractors and subcontractors must attach a copy of proof of completion of the OSHA 10 course to the first Certified Payroll submitted and on each succeeding payroll where any new or additional employee is first listed; and (e) such other information which the Owner and/or the Engineer request the Contractor furnish in connection with its Application for Payment.

§ 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 Engineer, but not yet included in Change Orders.

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

§ 9.3.1.2 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 material supplier unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Until Substantial Completion in accordance with Section 9.8, the Owner shall pay ninety-five percent (95%) of the amount due the Contractor on account of progress payments, less an amount necessary to satisfy any claims, liens or judgments against Contractor, which have not been suitably discharged. In accordance with Section 9.8.5, the Owner shall pay the entire amount retained from previous progress payments less two (2) times the amount required to complete items identified in a list prepared in accordance with Section 9.8.2 and the amount required to satisfy any outstanding claims, liens, or judgments against the Contractor.

§ 9.3.1.4 In the event the bonds identified in Section 11.4 become invalid, the Owner shall pay 90 percent of the amount of each progress payment due the Contractor until Substantial Completion in accordance with Section 9.3.1.3 above. At the sole discretion of the Owner, the Owner may declare a default by the Contractor pursuant to the terms and provisions of this Contract in the event that the bonds identified in Section 11.4 become invalid.

§ 9.3.2 Unless otherwise provided in the Contract Documents, and in any event subject to written approval in advance by the Owner, payments shall be made on account of materials and equipment which are in short and/or critical supply and/or have been specifically fabricated for the Project and are 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. The costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site shall not increase the Contract Sum.

§ 9.3.2.1 When payment for materials and equipment stored off site is approved by the Owner, copies of bills of lading and vendor invoices shall accompany the Contractor's request for payment. Procedures required by Owner shall include, but are not necessarily limited to, submission by the Contractor to the Engineer of bills of sale and bills of lading for such materials and equipment, provision of opportunity for Engineer's visual verification that such materials and equipment are in fact in storage, and, if stored off-site, submission by the Contractor of verification that such materials and equipment are stored in a bonded warehouse. Additionally, Contractor must furnish the following information, where payment is requested for materials and equipment stored off the Project site, as part of its Application for Payment: (a) type of material must be specifically identified by the trade contractor; (b) trade contractor must furnish an invoice from its supplier showing the total value of the material and/or equipment being stored off site; (c) trade contractor must provide a Certificate of Insurance for the full value of the item plus 10 percent.

§ 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 become the property of the Owner, but the care and protection of such materials and equipment shall remain the responsibility of the Contractor until incorporation into the Work, including, without limitation, maintaining insurance coverage on replacement cost basis without voluntary deductible.

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

§ 9.3.3 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 be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor further warrants that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to any agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

§ 9.3.3.1 Notwithstanding such transfer of title, the Contractor shall have the full continuing responsibility to install materials and equipment, protect and maintain the Work, materials and equipment in proper condition and forthwith repair, replace and make good any damage thereto without cost to the Owner until such time as the Work covered by the Contract is fully accepted by the Owner. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract. In the event that after title has passed to the Owner, any such Work, supplies, materials and equipment are rejected as being defective or otherwise unsatisfactory, title to all such items shall be deemed to have been transferred back to the Contractor.

§ 9.3.4 The Contractor expressly undertakes to defend the Indemnitees (as defined previously in Section 3.18), at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor or any portion of the property of any of the Indemnities (referred to collectively as liens in this Section 9.3.4). The Contractor hereby agrees to defend, indemnify and hold Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

§ 9.3.5 The Owner shall release any payments withheld due to a lien or a claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond which is: (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than One Hundred Fifty percent (150%) of such lien claim. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3, including, without limitation, the duty to defend and indemnify the Indemnities. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor and Owner in writing of the Engineer's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations 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 Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Engineer 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer 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 previously issued, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from 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 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;
- .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 failure to carry out the Work in accordance with the Contract Documents.
- .8 failure to comply with applicable federal, state or local statutes, regulations, and/or laws, including, without limitation, laws applicable to the provision of certified payrolls;
- .9 **failure of the Contractor to provide executed performance and payment bonds and a current certificate of insurance;**
- .10 **reasonable evidence that the Work has not progressed as indicated on the Application for Payment; or**
- .11 **breach of this**

Agreement.

Notwithstanding the extent to which Engineer certifies an Application for Payment, the Owner shall have the right to withhold payment, in whole or in part, should the Owner determine that any of the grounds set forth in this Section 9.5.1 do in fact exist. If the Owner withholds payment, in whole or in part, the Owner shall promptly provide to the Contractor and Engineer a written explanation of the reason(s) for which payment is withheld and shall promptly pay, in accordance with the Contract Documents, all amounts which are not in dispute. The Owner shall not be deemed to be in breach of this Agreement for the withholding of any payments pursuant to this section or any other provisions of this Agreement, provided that such withholding is done in good faith.

§ 9.5.2 When the above reasons for withholding certification or the Owner's withholding of payment are removed, certification and payment will be made for amounts previously withheld.

§ 9.5.3 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 Section 9.5.1. With respect to any Liens, claims, or other circumstances for which the Owner is entitled to withhold payments pursuant to decisions by the Engineer pursuant to Section 9.5.1, the Owner shall be entitled to withhold a sum equal to twice the stated amounts of such Liens or claims, or, where there is no stated amount, twice the amount determined by the Engineer to be necessary to protect the interests of the Owner. The Owner will release payments withheld due to Liens provided that the Contractor obtains a discharge of record of such lien, by bonding or otherwise. By posting a lien discharge bond, however, the Contractor shall not be relieved of any responsibilities or obligations under the Agreement, including, without limitation, the duty to defend, indemnify, and hold harmless the Indemnitees (as defined previously in Section 3.18). The cost of any premiums or other expenses incurred in connection with such bonds or other means of discharge of record shall be the sole responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.5.4 If the Engineer withholds certification for payment under Section 9.5.1, or if the Owner otherwise deems it necessary to protect its interests or the interests of the Project, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Engineer. Payments to the Contractor and Subcontractors by joint check shall constitute payment by the Owner under its agreement with the Contractor and such payment shall be reflected on the next Certificate for Payment. If the Contractor disputes any determination by the Engineer with regard to any Certificate for Payment, or in the event of a bona fide dispute between the Contractor and the Owner, the Contractor nevertheless shall expeditiously continue to prosecute the Work.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Engineer.

§ 9.6.2 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held in trust by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contracts with the Contractor for which payment was made by the Owner. The Contractor shall strictly comply with any common law, statutory, or decisional law trust fund requirements in the State of New York (including without limitation the requirements of New York Lien Law Article 3-A), and hereby agrees that the Owner has the same rights as any beneficiary of such trusts to examine the books and records of the Contractor to determine such compliance, from time to time at the Owner's sole discretion. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

§ 9.6.2.1 Within seven (7) days of receipt of a payment from the Owner, the Contractor shall pay each of its Subcontractors and suppliers for work performed and/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 with the Contractor, the Subcontractor is unable or unwilling to provide a performance bond and labor and material payment bond both in the full amount of the subcontract at the request of the Contractor. The Contractor shall not retain portions of the proceeds owed any Subcontractor and/or supplier from the Owner's payment to the Contractor for the "contract balance." Similar provisions apply to the Subcontractor and/or supplier paying each of its Subcontractors and suppliers. Nothing in this section shall create in the Owner any obligation to pay, or to ensure that the Contractor pays, any Subcontractor or supplier, or any relationship in contract or otherwise, implied or expressed, between any Subcontractor or supplier and the Owner. The Contractor agrees that it shall comply with the payment requirements of Section 106-b(2) of the New York General Municipal Law, as amended, and that to the extent there is any conflict between that statutory section and the provisions of this Section 9.6.2.1, the provisions of the statute shall prevail.

§ 9.6.3 The Owner may, at its discretion, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Engineer and Owner on account of portions of the Work done by such Subcontractor. The Contractor shall promptly notify the Owner of any claim by a Subcontractor that any amount is due and owing from the Contractor to the Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor, material supplier, or Sub-subcontractor, nor is there created any relationship in contract or otherwise, implied or express, between the Subcontractor or the Subsubcontractor or material supplier and the Owner or Engineer. The Contractor shall take prompt action with respect to any lien filed or claim made by any of its suppliers, materialmen, Subcontractors or Sub-subcontractors, or others to whom it is obligated so that any such liens or claims will be removed of record as against the Owner or the Owner's property within twenty (20) days after they are filed or made. The Contractor shall be solely responsible for the removal and payment of all such liens and claims, and the Owner shall have no liability with respect to them. If the Contractor does not promptly remove any such lien or claim as required by this section, the Owner may do so, and may then deduct the cost of doing so, including reasonable attorneys' fees and disbursements, from the Contract Sum.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2 through 9.6.4.

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

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.7 FAILURE OF PAYMENT

If the Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after 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 Engineer or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Engineer, 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 shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 Notwithstanding anything to the contrary contained in the Agreement or these General Conditions, if the Owner withholds any payment from the Contractor in good faith with reasonable cause and based on the Contractor's failure to perform the Work in accordance with the Drawings and other Contract Documents that set forth the scope and specifications of the Work, or for any other reason permitted by the Agreement, then the Contractor shall nonetheless continue to prosecute the Work expeditiously; provided that the Owner notifies the Contractor in writing that it intends to withhold such payment and states the reasons therefor. If the Contractor stops its Work and it is determined that the Owner had the right to withhold payment under the terms of the Contract Documents, then the Contractor shall be responsible to the Owner for all costs and damages (including attorneys' fees) arising from such stoppage of Work and the Contractor shall not be entitled to any adjustment in the Contract Sum or the Contract Time.

§ 9.7.2 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 an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter

due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 The Date of Substantial Completion of the Project or a designated portion thereof is the date when construction is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the entire Project (or such portion thereof as Owner earlier elects to occupy or utilize) for the use for which it is intended. Substantial Completion shall not be deemed to exist until (a) the Owner receives a Certificate of Occupancy for the Project (or such portion as elected by Owner) if such Certificate of Occupancy is required, and any other permits, approvals, licenses and any other documents from governmental authorities having jurisdiction therefore necessary for the beneficial occupancy of the project and (b) the Contractor, Engineer and Owner have agreed upon a schedule to provide the Owner with all as-built drawings, operating manuals, warranties and other required closeout documents. This date shall be established by a Certificate of Substantial Completion signed by the Owner, Engineer and Contractor and shall state their respective responsibilities for security, maintenance, heat utilities, damage to the Work and insurance. This Certificate shall also list the items to be completed or corrected together with a price for each item and a time for their completion and correction. If additional observations are required as a result of the Contractor's failure to complete work on a timely basis, the costs of the Owner's consultants for such additional observations amount will be deducted from the Contractor's Contract.

Notwithstanding the Date of Substantial Completion, any warranties called for by the Agreement or by the Drawings and Specifications shall commence on the date of Final Payment.

§ 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 prepare and submit to the Engineer 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 If any item, whether or not included on the Contractor's 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. In such case, the Contractor shall then submit a request for another inspection by the Engineer and the Owner to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate.

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

§ 9.8.5.1 In conformance with New York General Municipal Law Section 106-b(1)(a), upon proper execution of Certificate of Substantial Completion of Work, the Contractor shall submit a requisition for payment of the remaining amount of the Contract Sum. Upon certification of payment by the Engineer, the Owner will approve and promptly pay the remaining amount of the Contract Sum less two times value of any remaining items to be completed and/or corrected and less an amount necessary to satisfy any claims, liens or judgments against Contractor which have not been suitably discharged. Such payment shall be made under terms and conditions governing final payment except that the Owner's making of such payment shall not constitute the Owner's waiver of any objection to all or any portion of the Work performed by the Contractor or any claims the Owner may then have against the Contractor.

§ 9.8.5.2 Neither the requisition for payment stipulated in Section 9.8.5.1 nor any portion of retained percentage shall become due until the Contractor submits to the Engineer:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with

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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 under Section 9.8.5.1 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.

§ 9.8.5.3 As remaining items of Work are satisfactorily completed or corrected, the Contractor may submit a requisition for payment of these items. The Contractor shall submit with each such requisition for payment affidavits, consents of surety, and other data as described in Section 9.8.5.2 covering work for which payment is requested. Upon certification of such requisitions by the Engineer, the Owner will approve and promptly pay the requisition less an amount two times that which is necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

§ 9.8.5.4 Where the Project includes heating and/or air conditioning, electrical, communication, data or other systems which are not put into operation at the time of occupancy, a sum shall be withheld until these systems have operated to the general satisfaction of the Engineer. Contractor shall provide complete start up and commissioning of the systems with a detailed check list as recommended by the equipment and/or system manufacturer. The retained amount shall approximate five percent (5%) of the cost of the systems as determined by the cost breakdown submitted. The guaranty/warranty period for such systems will not commence until after authorization of final payment for such systems.

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may take over, use, occupy or operate any part of the completed or partly completed Work, and the Contractor shall not in any way interfere with or object to the use, occupancy, or operation of such Work by the Owner after receipt of notice in writing from the Owner that such Work or part of the Work will be used by the Owner on and after the date specified in such notice, provided, however, that the insurer consents as required in Section 11.3.1.5 and the use or occupancy is authorized by public authorities having jurisdiction over the Work. Upon any such occupancy, as between the parties, the Owner shall become responsible for all safety and security and the payment of all utility charges with respect to the Work or part of the Work occupied by the Owner. If the parties are unable to arrange conveniently for the allocation of utility charges between them, the Owner shall become responsible for all such charges.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Engineer 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 Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.9.4 Contractor shall cooperate with the Owner in order to make portions of the Project available as soon as possible.

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§ 9.9.4.1 The Site and buildings, whether work of Contractor is partially or fully completed or not, are property of the Owner who shall have certain rights and privileges in connection with use of same.

§ 9.9.4.2 Should there be, in the opinion of the Engineer unwarranted delay on part of any Contractor in completion of incomplete or defective work or other Contract requirements, and the Engineer so certifies, the Owner may have full or partial use and occupancy of any or all portions of buildings as required for moving in or installing furniture, fixtures, supplies, or equipment and for general cleaning and maintenance work. In such event, the Contractor whose unfinished work is done subsequent to installation of furniture, fixtures, equipment, etc., shall be responsible for the prevention of any damage to such installation. Such use or occupancy by the Owner shall in no instance constitute acceptance of any of the Work.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer and the Owner will promptly make such inspection and, when the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final 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. The Owner shall not be bound by the Engineer's final Certificate for Payment, and it may make its own investigation of the progress of the Contractor's Work and shall be obligated to pay only for Work actually completed by the Contractor in accordance with the Contract Documents.

§ 9.10.1.1 If the Work is not accepted by the Owner after final inspection and additional time is required to complete items identified during the final inspection, the date starting the one-year correction period described in Article 12 shall be set by the Engineer at its discretion.

§ 9.10.1.2 If the Engineer is required to provide additional services, extend the duration of services to the Owner, and/or perform additional final inspections because the Work fails to comply with the requirements of the Contract, or the Contractor did not complete the Work in accordance with the construction schedule, the amount of compensation paid to the Engineer by the Owner for additional services shall be deducted from the final payment to the Contractor.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Engineer:

- .1 all closeout documents required by the Contract Documents;
- .2 as-built drawings for the Work per the closeout requirements set forth in Division 1 of the Specifications;
- .3 confirmation that all start-up, testing, balancing and commissioning of systems, equipment and other materials has been successfully completed as required by the Contract Documents;
- .4 appropriate instruction and training regarding the use, operation and maintenance of all systems, materials and equipment has been provided to the operation and maintenance personnel of the Owner;
- .5 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, the form of which will be AIA Document G706-1994, "Contractor's Affidavit of Payment of Debts and Claims";
- .6 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;
- .7 consent of surety, if any, to final payment, the form of which will be AIA Document G707-1994, "Consent of Surety to Final Payment";

- .8 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; and
- .9 all warranties and guarantees required by the Contract Documents.

If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.2.10 In addition to the submittals required in Section 9.10.2, the Contractor shall submit separate release or waivers of lien for each Subcontractor, material supplier, or others with lien rights against the Project, and shall submit a list of such parties.

§ 9.10.2.11 Submittals required above shall be made in accordance with procedures described in Division 1.

§ 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 Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed 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 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 Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 **Claims for indemnification;**
- .5 **Claims about which the Owner has given the Contractor written notice; and**
- .6 **Claims arising after final payment**

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 At any time a lien is filed against the Project funds, the Owner may demand that the Contractor discharge said lien, through bonding or otherwise, and the Contractor must obtain the discharge of said lien within seven days of such demand.

§ 9.10.7 Existing warranties shall not deprive the Owner of any cause of action, right, or remedy otherwise available for breach of any of the provisions of the Contract Documents. The periods referred to above shall not be construed as limitations on the time in which the Owner may pursue any such action, right or remedy.

§ 9.10.8 The Contractor shall achieve Final Completion of all Work, including, without limitation, correction of punch-list items, preparation and delivery of all manuals, presentation of training and completion of final paper submissions not later than thirty (30) days following the date of Substantial Completion. In the event the Contractor shall fail to achieve Final Completion within such a period of time, the Contractor and the Contractor's surety, if any, shall be liable for and shall reimburse the Owner for any and all fees paid to the Engineer, materials, and other expenses made necessary by the Contractor's failure. Additional fees and expenses shall be charged by the Owner against any Final Payment due or which may become due to the Contractor, and the Contractor shall promptly pay or refund the Owner the excess, if any, upon the Owner's written request.

§ 9.10.9 Warranties required by the Contract Documents shall commence on the date when Final Payment is received by the

Contractor.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

Safe access to and egress from any building under construction as part of this Contract, or any existing building in which Work is being done under this Contract, shall be maintained and remain unencumbered by each Contractor in accordance with all applicable codes, rules and regulations of authorities having jurisdiction on the Work. Contractors and Subcontractors shall cooperate in maintaining this condition. Roadways, paths, walks, exits, service drives and other areas shall remain unobstructed and shall be maintained in a safe and satisfactory condition, for all persons using the building and premises. Materials shall not be stored promiscuously about the site or in the building, but shall be carefully stored in areas which will not interfere with pedestrian traffic nor with access to and egress from adjacent properties and use of the building. Each Contractor shall provide and maintain such temporary Work as may be required for the protection of its finished Work where liable to injury. Each Contractor will be responsible for all of its Work, materials and equipment that may be damaged or stolen during the duration of the Contract and until the Work is accepted by the Owner. Each Contractor shall make good any such damage or loss without expense to the Owner. Each Contractor shall not permit unnecessary hazards to be created nor permit them to continue if they are discovered. Contractor's storage and staging areas shall be only in locations assigned or approved by the Owner and may be required to be relocated by the Contractor as building occupancy or use changes during the course of the Work. This relocation will be done by the Contractor at no additional cost to the Owner.

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

§ 10.2.2.1 The Contractor acknowledges that the Labor Law of the State of New York, and regulations adopted thereunder, place upon both the Owner and the Contractor certain duties and that liability for failure to comply therewith is imposed on both the Owner and the Contractor regardless of their respective fault. The Contractor hereby agrees that, as between the Owner and the Contractor, the Contractor is solely responsible for compliance with all such laws and regulations imposed for the protection of persons performing the Contract. The Contractor shall defend, indemnify and hold harmless the Indemnitees, as defined in Section 3.18 of and from any and all liability for violation of such laws and regulations and shall defend any claims or actions which may be brought against the Owner as a result thereof. In the event that the Contractor shall fail or refuse to defend any such action, the Contractor shall be liable to the Owner for all costs of the Owner in defending such claim or action and all costs of the Owner, including, without limitation, attorneys' fees incurred in recovering such defense costs from the Contractor.

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

§ 10.2.3.1 Temporary barricades, tunnels, partitions, fencing and such other structures shall be constructed and maintained by the Contractor as may be necessary to maintain building exits and control access to the Contractor's Work and operations.

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

§ 10.2.4.1 Storage of Hazardous Materials: Use and storage of propane gas, refrigerants, solvents, paints and other hazardous or dangerous materials shall be subject to the latest codes and regulations applicable in the County of Westchester, New York and the local jurisdiction within which the Project is located, of OSHA and any other federal, state or local regulatory body requiring more stringent conditions.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 through 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 through 10.2.1.5, except damage or loss attributable to acts or omissions of the Owner or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either 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 and Engineer.

§ 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. No Contractor shall load any part of the Work with materials, equipment, shores, bracing, or other items which in any way could cause damage to the Work or to other Work or could endanger persons in or about the Work.

§ 10.2.8 Restoration: If, during the construction, public or private property is damaged or destroyed as a consequence of its Work, the Prime 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.

§ 10.2.9 OSHA.: In addition to all requirements set forth herein, all Contractors and Subcontractors which perform any Work under this Contract will fully comply with the provisions of the federal Occupational Safety and Health Act of 1970, as amended, and with any rules and regulations pursuant to the Act. This requirement shall apply continuously and not be limited to normal working hours. The duty of the Engineer to conduct construction review of the Contractor's or its Subcontractor's performance is not intended to include review of the adequacy of the Contractor's or its Subcontractor's safety measures in, on or near the construction site or buildings.

§ 10.2.10 Welding: All welding shall be done in accordance with the American Welding Society Code for Arc Welding, certified for the current year. When cutting or welding is to be done, the Owner MUST be notified prior to the start. In addition, the Contractor for the Work shall provide a fire guard with proper fire extinguisher for the duration of and one-half hour after the cutting and welding work. A welding curtain is to be installed around the area where welding or cutting is to be done. No welding machines will be tied into electric panels without express permission from the Owner. Portable gasoline driven generators may not be used without the express permission of the Owner. The Contractor must obtain the Owner's permission for each location in an existing building where welding is required. Owner's stipulated requirements as a condition for its permission must be adhered to.

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

§ 10.2.12 The Contractor shall be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.13 The Contractor shall immediately contact the Owner and Engineer and, within twenty-four hours, report, in writing, to the Owner and Engineer, all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and Engineer.

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

§ 10.2.15 The Contractor is responsible for restoration and/or repair of utilities, private property, buildings, pavement, walkways, roads, etc. damaged by its activities under this Agreement to the satisfaction of the Owner and Engineer.

§ 10.2.16 Title to all completed or partially completed Work at the job site and to all materials delivered to and stored at said job site which are intended to become a part of the completed Work covered by the Contract, shall be in the name of the Owner. Notwithstanding the foregoing, prior to the acceptance of the completed Work by the Owner, the Contractor shall be liable for all loss of, or damage to, said completed Work, partially completed Work, materials furnished by the Contractor, and materials or equipment furnished by others, the custody of which has been given to the Contractor arising from any cause other than a cause against which the Owner herein undertakes to carry insurance. In the event of loss or damage from cause other than those against which the Owner undertakes to carry insurance, the Contractor shall replace or repair the said Work materials at its own cost and expense, to the complete satisfaction of the Owner and Engineer.

§ 10.2.17 The Contractor causing damage to the Work of another Contractor shall be responsible for the repair and replacement of such damaged Work. Back charges shall be made when corrections are not made promptly.

§ 10.2.18 The Owner reserves the right to pay the Contractor originating the back charge from monies due the Contractor who is responsible for the Work required by same and shall deduct it from the amount due the said responsible Contractor.

§ 10.2.19 Contractor originating back charges will determine the amount of the back charges in accordance with Article 7 herein, in order to obtain the Engineer's approval.

§ 10.2.20 Contractors under direct Contract with the Owner will be expected to take care of back charges originating with Subcontractors under their employ under the terms and conditions as established herein. Contractors under direct Contract with the Owner, and their Sureties, shall indemnify and hold the Indemnitees (as defined in Section 3.18) harmless from claims of this type, including paying for legal expenses necessary to remove or settle any liens or other legal claims against the Owner.

§ 10.2.21 INJURY OR DAMAGE TO PERSON OR PROPERTY

If any party suffers injury or damage to person or property because of an act or omission of another party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

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

stop Work in the affected area and report the condition to the Owner and Engineer in writing. The Owner shall arrange for the material to be tested and if the test reveals that the material is a hazardous material or substance which has not been rendered harmless, the Owner shall pay for the test; otherwise, the Contractor shall bear the cost of the test and the Contract Sum shall be reduced by the amount of that cost. The Contractor shall comply with the reasonable instructions of the Owner after the test is conducted. This section shall not apply in the case of asbestos which is to be removed and disposed of as part of the Work of this Agreement.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Indemnitees, as defined in Section 3.18, 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, if the Contractor, or any Subcontractor or person for whose work the Contractor is responsible: (1) brought such material onto the Project site; or (2) failed to timely provide notice of the condition and stop Work in the affected area as required by Section 10.3.1.

§ 10.3.4 The Owner shall under no circumstances bear responsibility for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents, and the Contractor shall bear full responsibility, and shall indemnify and hold harmless the Indemnitees, as defined in Section 3.18, from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance (that was not brought to the site by the Contractor or those for whom the Contractor is responsible) solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

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

§ 10.3.8 The Contractor shall take all reasonable precautions and measures to prevent any contamination by or spread or disturbance of hazardous or potentially hazardous substances or materials stored, used, or discovered on the Project site.

§ 10.4 EMERGENCIES

§ 10.4.1 The Contractor shall provide at the site, such equipment and medical facilities as are necessary to supply first-aid service to anyone at the Work.

§ 10.4.2 The Contractor must promptly report in writing to Owner and Engineer all emergencies whatsoever arising out of, or in connection with the performance of the Work, whether on, or adjacent to the site, which caused death, personal injury or property damages, giving full details and statements of witnesses. In addition, if death, injury, or damages are caused, the emergency shall be reported immediately to the Owner and Engineer.

§ 10.4.3 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.4.4 All fire and emergency access, including roads, right-of-ways, corridors, doors, and stairs, and all existing fire and smoke detection systems shall be maintained at all times in accordance with fire safety laws. If the Work requires the temporary obstruction of any fire and emergency access or existing fire and smoke detection systems, the Owner and Engineer shall be notified at least 72 hours in advance.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, including private entities performing Work at the site and exempt from the coverage on account of the number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but obligated by the Contract Documents to provide the insurance required by that section;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18;
- .9 **Where the Contract or Subcontract involves asbestos, the insurance required by Section 11.1 shall specifically include the words asbestos abatement work and shall specify any limitations on completed operation time period. If there is a limitation it will be at the Owner's discretion to accept or reject that limitation;**
- .10 Insurance must remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Section 12.2.2.2; and
- .11 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:
 - .1 Premises Operations without exclusion of X, C and U coverage;
 - .2 Independent Contractor's Protective;
 - .3 Products and Completed Operation;
 - .4 Personal Injury Liability;
 - .5 Contractual, including specified provision for Contractor's obligation under Section 3.18;
- .6 Owned, non-owned and hired motor vehicles; and
- .7 Broad Form Property Damage including Completed Operations.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverages shall be written on a commercial, occurrence basis and shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such

other period for maintenance of completed operations coverage as specified in the Contract Documents. The general liability coverage specified in Sections 11.1.1.3 and 11.1.1.4 may be written on either a “Comprehensive General Liability Insurance” policy form or a “Commercial General Liability Coverage Form” provided the limits and coverage comply with that specified below. All coverages are to be written on an occurrence basis unless approved by the Owner.

§ 11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. No construction will be commenced until the Owner has approved the Contractor’s Certificates of Insurance. The Owner shall be listed, by name, on all certificates and policies as an Additional Insured on a primary and non-contributory basis. These certificates and the insurance policies required by Section 11.1 shall contain a provision that the coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner and the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate and a copy of the insurance policy evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor’s information and belief. Certificates of insurance shall be issued on standard forms equal to ACORD 25 (05/2010) forms as manufactured by the ACORD Corporation. Review and acknowledgement of the Certificates of Insurance by the Owner or Engineer shall not relieve or decrease the liability of the Contractor hereunder. The Commercial General Liability and Umbrella Liability insurance policies shall name the Owner, the Engineer and the Engineer’s consultants as additional insureds with respect to the Project to which these insurance requirements pertain. Additional insured coverage of the Owner, the Engineer and the Engineer’s consultants on the Contractor’s commercial general liability policy shall be established by endorsement. Acceptable policy endorsements are ISO Form Additional Insured Endorsement CG 20 10 11 85, or the carrier’s manuscript equivalent that covers completed operations. These policies shall be provided on a primary and non-contributory basis, ahead of any insurance carried by the Owner or the Engineer with respect to the Project. The certificates of insurance described in this section with evidence of additional insurance and primary insurance status shall be submitted to the Owner prior to commencement of the Work by the Contractor. Certified copies of all required insurance policies, together with all applicable endorsements, must be delivered to the Owner within sixty (60) days thereafter. The Owner stipulates and agrees that it will hold the certified policy copies in confidence, to be disclosed to and reviewed only by the Owner’s administrators at the superintendent or assistant superintendent level, the Owner’s legal counsel, and its insurance consultant. The Commercial General Liability and Umbrella Liability policies shall be endorsed to provide that the Contractor’s respective insurers will give the Owner as additional insured the same notice, in the same manner and within the same time periods, that they are required by the terms of the policies or by law to give the Contractor as named insured, with respect to any change in coverage or limits, or any cancellation or non-renewal for any reason other than cancellation by the Contractor or non-payment of premium.

§ 11.1.4 [Intentionally omitted.]

§ 11.1.5 Schedule of Insurance

The Contractor, at its own expense, shall procure and maintain the following insurance coverages with limits of liability not less than the limits specified, or greater if required by law. The insurance carriers providing the following coverages shall be licensed to do so in New York State and shall also be rated no lower than “A” by the most recent Best’s Key Rating Guide” or Best’s Agent’s Guide or must be otherwise acceptable to the Owner.

§ 11.1.5.1 Workers’ Compensation and Employers’ Liability

Workers’ Compensation and Employers’ Liability coverage complying with the laws of the State of New York and elsewhere as required and shall include a minimum of:

Bodily Injury by Accident: \$500,000 Each Accident
Bodily Injury by Disease: \$500,000 Each Employee
Bodily Injury by Disease: \$500,000 Policy Limit

NYS Disability Insurance shall provide statutory coverage and limits for all covered employees

§ 11.1.5.2 Commercial General Liability

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

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

Products and Completed Operations Coverage must be maintained for a period of at least three (3) years after final payment and must provide that the Owner is an additional insured on a primary basis for the same period. These limits must apply on a per project basis. Coverage must be written on CG0001 form or its equivalent,

§ 11.1.5.3 Automobile Liability

Business Automobile Liability, including liability arising out of any owned, leased, non-owned or hired automobile with per accident limits of liability of not less than \$1,000,000.

§ 11.1.5.4 Pollution Legal Liability Insurance

If Work includes asbestos removal, the Contractor will be required to carry and maintain pollution legal liability insurance coverage with the minimum limits set forth below, in a form acceptable to the Owner and written by an insurance company acceptable to the Owner. Proof of such coverage shall be provided prior to the commencement of the Work. With coverage for the services rendered for the Owner, including, but not limited to removal, replacement enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. The limits shall be as follows:

Each Occurrence: \$5,000,000
Aggregate: \$5,000,000 (specific to the project)

These limits shall include products and completed operations. If retroactive date is used, it must pre-date the inception of the Contract. If the Contractor is using motor vehicles to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948 or equivalent) as well as proof of MCS 90. The coverage shall include a three-year reporting period following substantial completion of the Work.

§ 11.1.5.5 Umbrella Liability

Provide excess coverage over the Commercial General Liability, the Auto Liability and the Asbestos Liability, if required by contract, policies with limits not less than \$5,000,000 each occurrence and \$5,000,000 aggregate specific to the contract. This coverage shall apply before any other insurance available to the additional insureds.

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

Bodily Injury (Each Occurrence) \$1,000,000
Bodily Aggregate \$2,000,000
Property Damage (Each Occurrence) \$1,000,000

§ 11.1.5.7 For all required insurance except Worker's Compensation and Disability benefits, the Owner, the Board of Trustees of the Owner, Engineer, and their officers, employees, elected officials, board members and agents shall be named as Additional Insured on a primary and non-contributory basis including the coverage for ongoing and completed operations. For Commercial General Liability, Contractor must provide forms CG 2010 (11/85), or CG 2010 (10/01) with CG 2037 (10/1), or their equivalent, and such endorsements must be attached to the certificate of insurance. All such policies shall be primary and non-contributory over any and all collectible insurance, and shall provide that they will not be cancelled, allowed to expire or restrictively modified without thirty (30) days' prior written notice to the Owner.

§ 11.1.5.8 It is expressly understood and agreed by the Contractor that the insurance requirements specified above, except for Professional Liability, contemplate the use of occurrence liability forms. If claims-made coverage is evidenced to satisfy any of the specified requirements, the Contractor shall comply with the following requirements:

- .1 If the claims-made coverage terms designate a specific retroactive date, the Contractor shall maintain a retroactive date which is not later than the earlier of (a) the date of the commencement of the term of this Agreement, or (b) the original coverage retroactive date for the Contractor's first claims-made policy for each and every coverage provided on a claims-made basis;
- .2 For the duration of this Agreement or any subsequent renewals, if the retroactive date is advanced or if the policy is materially changed, cancelled, or not renewed, the Contractor shall purchase, at its own expense, an Extended Reporting Period ("Tail" coverage) in compliance with the minimum standards prescribed by the Insurance Department of the State of New York in Regulation No. 121 (11 NYCRR 73) or its subsequent amendments or revisions;
- .3 Upon termination of the services provided to the Owner by the Contractor, the Contractor shall maintain such claims-made coverage without interruption for a period of time equal to the length of any Extended Reporting Period requirement as specified above. If the retroactive date is advanced or if the policy is materially changed, cancelled, or not renewed during this period of time, the Contractor shall purchase, at its own expense, an Extended Reporting Endorsement that is in compliance with the minimum insurance standards prescribed by the Insurance Department of the State of New York in Regulation No. 121 (11 NYCRR 73) or its subsequent amendments or revisions.

§ 11.1.5.9 It is expressly understood and agreed that:

- .1 The amount of insurance provided in the aforementioned insurance coverages shall not be construed to be a limitation of the liability on the part of the Contractor or any of its Subcontractors.
- .2 Any type of insurance or any increase in limits of liability not described above which the Contractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense and shall not be charged back to the project.
- .3 The carrying of insurance described shall in no way be interpreted as relieving the Contractor or any Subcontractor of any responsibility or liability under the Contract.
- .4 In the event of a failure of Contractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Owner shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of the Contractor who agrees to furnish all necessary information thereof and to pay the cost thereof to the Owner immediately upon presentation of an invoice.
- .5 Any work performed without having the insurance coverage is at Contractor's own risk.

§ 11.1.5.10 Where the Contract or Subcontract involves abatement of asbestos, the insurance required by this Section 11.1 shall specifically include the words "asbestos abatement work", shall include professional liability and pollution liability coverage, and shall specify any limitations on the completed operations time period. If there is a limitation, it will be accepted or rejected at the Owner's discretion.

§ 11.1.5.11 The Contractor shall provide asbestos abatement liability insurance with an express provision that the Owner will be provided a defense and will be indemnified if an asbestos-related accident or release occur in connection with the Contractor's Work under this Contract and create liability for asbestos wastes or any other environmental condition herein. The Contractor expressly agrees to name the Owner as an additional insured on its

asbestos abatement liability insurance policy for a period of not less than three (3) years following the acceptance by the Owner of the certificate of completion.

§ 11.1.5.12 If asbestos abatement liability insurance is not available from an insurer licensed to sell insurance in the State of New York, the Contractor shall immediately notify the Owner so that other appropriate insurance can be written.

§ 11.1.5.13 The Contractor or Subcontractor performing asbestos removal shall provide insurance which contains an endorsement providing coverage for the asbestos removal / treatment / abatement activities which are the subject of this Work.

§ 11.1.5.14 The Contractor or Subcontractor shall provide fully completed New York Construction Certificate of Liability Insurance Addenda (ACORD 855 2014/05) with the certificates of insurance.

§ 11.2 Owner's Liability Insurance

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

§ 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The insurance shall not, however, cover the Contractor's and its employees' or Subcontractors' equipment, tools, materials, or supplies that will not be incorporated into the completed Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Engineer's and Contractor's services and expenses required as a result of such insured loss.

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

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

§ 11.3.1.4 [Intentionally omitted.]

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

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§ 11.3.2

Boiler and Machinery Insurance.

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

§ 11.3.3

Loss of Use Insurance.

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7

Waivers of Subrogation. If permitted by both the Owner's and Contractor's insurance companies without penalty, 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, and (2) the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this 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 Engineer, Engineer's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

§ 11.3.9 [Intentionally omitted.]

§ 11.3.10 [Intentionally omitted.]

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§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Contractor shall furnish, in duplicate, bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds shall be obtained from a surety company satisfactory to the Owner, licensed to do business in the State of New York (where the project is located), and listed in the latest issue of the U.S. Treasury Circular 570. The amount of each bond shall be equal to one hundred percent of the Contract Sum. Each bond shall be maintained throughout the duration of the Project.

§ 11.4.2 Bonds shall be prepared on AIA Documents A312 - Performance Bond and A312 - Payment Bond, without modifications other than statements that (1) the bonds are given as statutory bonds with Section 13 of the Performance Bond and Section 14 of the Payment Bond applying in full, without exception, and (2) the Performance Bond includes performance of the Contractor under any warranties in the Contract Documents, including performance after the dates of Substantial and Final Completion. The cost of such bonds shall be included in, and shall not increase, the Contract Sum. In addition, Bonds shall be revised as set forth in 11.4.2.1 and 11.4.2.2.

Notwithstanding any provisions to the contrary in any Bond, all Bonds shall be deemed to include and to incorporate the revisions set forth in 11.4.2.1 and 11.4.2.2

§ 11.4.2.1 Notwithstanding any other provisions in any Performance or Payment Bond, it shall not be a condition precedent to termination of a Contract or Contractor that notice be sent to or meeting be arranged or held with a Contractor (Principal) and/or surety, prior to such termination. Any such requirement(s) shall be void and unenforceable and the Owner shall have the right to reject any such bond(s) and/or ignore such condition. The exclusive method of termination of a Contract or Contractor is contained in the Contract Documents, and a Contractor and surety expressly agree to be bound thereby.

§ 11.4.2.2 A Rider including the following provisions shall be attached to each Performance Bond: "Surety agrees that it consents to and waives notice of any addition, alteration, omission, change or other modification of the Contract Documents. Such addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not relieve the surety of its obligations hereunder, and notice to the surety of such matters is hereby waived." Notwithstanding the absence of any such Rider to any Performance Bond, the language set forth in this section shall be deemed to be included and incorporated within any such Performance Bond.

§ 11.4.3 The Contractor shall deliver the required bonds to the Engineer for transmittal to the Owner not later than three (3) days following the date the Agreement is executed, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished. The Contractor shall submit with and at or before the same time the bonds are delivered the most recent A.M. Best Rating and Analysis for the proposed surety and evidence that the proposed surety is admitted and licensed to do business in the State of New York.

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11.4.4 The Contractor shall require the attorney-in-fact who executed the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§ 11.4.5 The Owner reserves the right to make additions, omissions or changes in the Work. The Contractor shall keep the surety advised of all Modifications to the Contract Documents.

§ 11.4.6 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.

§ 11.5 MAINTENANCE BOND

§ 11.5.1 As a condition to the Owner's acceptance of the Certificate of Substantial Completion under Section 9.8.2, the Contractor shall deliver to the Engineer a maintenance bond in a form acceptable to the Owner in an amount equal to ten percent (10%) of the Contract Sum to secure the Contractor's obligations under Section 12.2.2.

Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Engineer and the Owner have not specifically requested to examine prior to its being covered, the Engineer and the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Engineer or the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Payment 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 Engineer'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 years after the date of Final Payment for the Work or designated portion thereof or after the date for commencement of warranties established otherwise in the Contract Documents, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the Owner fails to notify the

Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The two-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 Final Payment and the actual completion of that portion of the Work.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the two- year correction period in connection with the Work requiring correction shall be renewed and recommence from the date such correction is accepted by the Owner.

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

§ 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, not to exceed forty-five (45) days from the date the Contractor received written notice from the Owner per Section 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 Engineer issued, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) 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 Engineer'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.

§ 12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5.1 The Contractor shall also replace or repair to satisfaction of Owner any or all damage done to the building or its contents or to work of other trades in consequence of work performed in fulfilling any applicable warranty. This clause is general in nature and will not operate to waive stipulations of other clauses that specify warranty periods in excess of two (2) years.

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

§ 12.2.7 The corrective remedies set forth in this Paragraph 12.2 are not exclusive and shall not deprive the Owner of any action, right, or remedy otherwise available to it for breach of any of the provisions of the Contract Documents and for any damages suffered by the Owner as a result of such defects in the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

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Section to apply, the Owner must accept non-conforming Work in writing specifying the non-conforming Work being accepted. Notwithstanding any acceptance by the Owner, if the Owner discovers non-conforming Work that the Owner has not expressly accepted in writing, the Owner may demand that the Contractor correct such Work as per the provisions of Article 12 hereof.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the State of New York, and the parties expressly agree that any claim, dispute, or other controversy of any nature arising out of the Contract or performance of the Work shall be commenced and maintained in New York State Supreme Court, Westchester County.

§ 13.1.2 The Contractor shall at all times observe and comply with all Federal and State Laws and all Laws, Ordinances and Regulations of the Owner, in any manner affecting the Work and all such orders decreed as exist at present and those which may be enacted later, by bodies or tribunals having jurisdiction or authority over the Work, and the Contractor shall defend, indemnify and save harmless the Indemnitees (as defined in Section 3.18) against any claim or liability arising from, or based on, a violation of any such law, ordinances, regulation, order or decree, whether by Contractor or by its employee or agents.

§ 13.1.3 Except as other specified, the Contractor shall comply with the current editions of applicable specifications of the following agencies, herein referenced. In the case of conflicting requirements, the most stringent shall apply: New York State Department of Health (NYSDH); 2009 NYS Building Code; U.S. Department of Commerce, Commercial Standards (C.S.); New York State Department of Public Work (NYSDPW); American National Standards Institute (ANSI); National Electric Code (NEC); American Insurance Association; National Fire Protection Association (NFPA); Americans with Disabilities Act (ADA); SMACNA - Technical Manuals and Standards; IAQ (Indoor Air Quality) Guidelines of Occupied Buildings Under Construction - 1995.

§ 13.1.4 Building codes, regulations, and other applicable governmental requirements shall govern the Work of this Project. The Contractor shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, and all regulations of the New York State Labor Law pertaining to hazardous conditions that may develop in connection with the Work of this Contract. All Work and materials of the Contract shall comply with all federal, state, county and local building, health, plumbing, HVAC, and electrical codes, laws, ordinances and regulations that apply to the Work. All Work of this Project shall be subjected to the provisions of all applicable requirements of local utility company regulations. Any covered product or material used shall comply with combustion/toxicity tests as found in the New York State Building Code and shall be listed by the Department of State Building Materials and Finishes Data File.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such 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 such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been 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 was 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 RIGHTS AND REMEDIES

§ 13.4.1 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.

§ 13.4.2 No action or failure to act by the Owner, Engineer 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 there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Engineer and the Owner timely notice of when and where tests and inspections are to be made so that the Engineer and the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Engineer 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 Engineer of when and where tests and inspections are to be made so that the Engineer and the Owner may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 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 Engineer's services and expenses shall be at the Contractor's expense, including the cost of retesting for verification of compliance if necessary until the Engineer certifies that the Work in question does comply with the requirements of the Contract Documents, and none of such costs shall be included in computing the Contract Sum. The Contractor shall also replace or repair to the satisfaction of the Owner any and all damage done to the building or its contents or to work of other trades in consequence of Work performed in fulfilling the Contractor's warranty obligations. This clause is general in nature and will not operate to waive other clauses that may specify warranty or correction periods in excess of one (1) year.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Engineer and the Owner.

§ 13.5.5 If the Engineer and the Owner are to observe tests, inspections or approvals required by the Contract Documents, the Engineer and the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

[Intentionally Omitted]

§ 13.7 TIME LIMITS ON CLAIMS

§ 13.7.1 No action or proceeding shall lie or be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any claim arising out of or based upon the Agreement or the Contract Documents or by reason of any act or omission or requirements relating to the giving of notices and information, unless such action or proceeding shall be commenced within one (1) year after submission to the Owner of the final Application for Payment. As to a claim based upon money required to be retained for any period after the date of the

final Application for Payment, such action must be commenced within six (6) months after such money becomes due and payable under the terms of the Contract. If the Contract is terminated by the Owner, such action must be commenced within six (6) months after the date of such termination. The Contractor's acceptance of final payment shall constitute a release of all claims against the Owner. This provision shall not relieve the Contractor of the obligation to comply with the provisions of the law relating to notices of claim.

§ 13.7.2 Acts or failures to act occurring during the construction of the Project or following the issuance of the final certificate for payment, which give rise to a cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor, whichever occurs last.

§ 13.8 LABELED MATERIAL AND EQUIPMENT

§ 13.8.1 The term "labeled" shall apply to materials or equipment to which has been attached a label of a nationally recognized testing laboratory that maintains periodic inspection of materials or equipment and by whose labeling, compliance with nationally recognized standards or the conduct of tests to determine suitable usage in a specified manner, is assured. Unless otherwise specified, the Underwriters Laboratories, Inc. is the recognized agency for required labeling.

§ 13.9 SEPARATION OF METALS

§ 13.9.1 Each Contractor shall separate all dissimilar metals with vinyl gaskets or a heavy coat of bituminous paint (except where bitumen may react with caulking or other materials) to prevent corrosive or electrolytic action.

Where there is a conflict as to which Contractor or Subcontractor provides the separation materials, the Contractor or Subcontractor whose Work is installed after the Work requiring separation shall provide the separation materials.

§ 13.10 MANUFACTURER'S AND TRADE STANDARDS

§ 13.10.1 Whenever any manufacturer of material utilized in the Project issues recommended fabrication, installation, erection, and/or application standards or instructions, such standards or instructions shall be strictly followed in the performance of the Work, except as specified otherwise.

§ 13.10.2 Whenever any trade, organization, institution, utility company, code group, society, association and governing board standard, or requirement of specification is adopted by reference in the Contract Documents, all Work related thereto shall be performed in strict accord with the referenced edition thereof and amendments thereto, except where a higher standard is specifically required by the Contract Documents.

§ 13.10.3 The Contractor shall take full responsibility for failure of materials, devices, equipment, systems, and finishes not fabricated, installed, erected, or applied in accord with the requirements of this Article and shall remove, replace, repair or correct any such failures or deficiencies promptly upon notification by the Owner or Engineer

§ 13.11 No Oral Waiver or Constructive Changes

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by the Owner, and shall not relieve the Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

§ 13.12 Notices Regarding Liens The Contractor shall provide to the Owner copies of all notices of any type regarding liens received from Subcontractors, Sub-subcontractors, or suppliers to the Contractor.

§ 13.13 Wages Rates Contractor shall comply with prevailing wage rate determinations as issued by the State of New York Department of Labor for the location and duration of this project.

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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 or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Engineer has not certified or issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided herein, or because the Owner has not made payment after ten (10) days written notice of such failure to make payment provided that such failure is not due to a disputed amount, and except to the extent the Owner is excused from timely making all or part of any payment on a Certificate for Payment as per any other provision of the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Article 2 hereof.

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, it being agreed that monetary damages shall be an adequate remedy for the Contractor for any breach of this Agreement or the Contract Documents by the Owner.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon thirty days' written notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for such completed Work that has not otherwise been compensated, but in no event shall the Owner be liable to the Contractor for any prospective loss, including, but not limited to, termination expenses, lost profits or unabsorbed overhead. Notwithstanding the foregoing, any such payments to the Contractor shall be less any setoffs to which the Owner may be entitled as per any other provision of the Contract Documents.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and Engineer, and upon the failure of the Owner to cure the alleged ground for termination within the seven days additional period, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 is substantially behind schedule as determined by the Engineer or Owner;
- .6 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;

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- .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 requirements of the Contract Documents;
- .8 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents;
- .9 fails or neglects to progress the Work in such a manner as to reasonably assure the completion of the Work with the Contract Time or in accordance with the Construction Schedule;
- .10 disregards the instructions of the Engineer or Owner (when such instructions are based on the requirements of the Contract Documents);
- .11 fails to keep the Project free from strikes, work stoppages, slowdowns, lockouts, or other disruptive activity;
- .12 Contractor's progress of the Work is such that Substantial and/or Final Completion will not be achieved on or before the required completion dates, provided that the Contractor is not then entitled to an extension of Contract Time; or
- .13 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, three days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Engineer'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 be certified by the Engineer, and this obligation for payment shall survive termination of the Contract.

§ 14.2.4.1 The costs of finishing the Work also include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect and consequential damages incurred by the Owner by reason of the termination of the Contractor as stated herein.

§ 14.2.5 If the Owner wrongfully terminates the Contract for cause, the rights, remedies and obligations of the parties will be the same as if the Owner had terminated the Contract for convenience under Section 14.4.

§ 14.2.6 In the event that the Contractor, or the Contractor's surety, challenges the Owner's termination of the Contract for Cause, and the Owner prevails in litigation in connection with such challenge, whether initiated by the Owner or by the Contractor and/or the Contractor's surety, the Owner shall be entitled to its costs, including reasonable attorney's fees, incurred as a result of such litigation, as part of any judgment against the Contractor and/or the Contractor's surety. Such costs, including reasonable attorney's fees, shall be deemed a cost of finishing the Work.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause. Notwithstanding any other provision to the contrary in the Agreement, the Owner reserves the right at any time and in its absolute discretion to terminate the services of the Contractor and/or the Work by giving written notice to the Contractor. This termination for convenience of the Owner provision allows and authorizes the Owner to terminate this Contract at any time and for any reason whatsoever. This right may be exercised by the Owner in its complete discretion. Termination by the Owner under this Section shall be by Notice of Termination delivered to the Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately and in accordance with instructions from the Owner:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; and
- .4 **proceed to complete the performance of the Work required under portions of the Contract not terminated, if any.**

§ 14.4.3 Upon receipt of written notice of the Owner's exercise of such termination, the Contractor shall be entitled to, and the Owner shall reimburse the Contractor for, an equitable portion of the Contractor's fee based on the portion of the Work completed before the effective date of termination and for any other reasonable costs attributable to such termination. The Contractor's entitlement to payment for all such work shall be predicated on its performance of such work in accordance with the Contract Documents as certified by the Engineer. The Contractor shall be entitled to no other payment and waives any claim for damages including, but not limited to, lost profits, any prospective loss, underutilization of personnel or equipment, unabsorbed overhead, and any and all items of consequential loss or damage. The Owner shall be entitled to credit against any payment to be made to the Contractor pursuant to this Section 14.4 the following: (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims which the Owner has against the Contractor under the Contract Documents; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor, the cost of which is included in the Contract Sum.

§ 14.4.4 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question raised by the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Contractor.

§ 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor must be initiated by written notice to the Owner and the Engineer. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier. Failure to do so shall be an irrevocable waiver of the Claim.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided elsewhere in the Agreement, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents; provided, however, that the Contractor shall use its best efforts to furnish the Engineer and Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Engineer and the Owner in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

[Intentionally Omitted]

§ 15.1.4.1 The Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time if:

- .1 The Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Sum and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or
- .2 The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for the Contractor prior to Contractor's making such final commitment;
- .3 The Contractor failed to give the written notice within the time and as required by Section 15.1.2; or
- .4 If the Owner and the Contractor are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Sum or Contract Times, a claim may be made therefore as provided in Article 15. However, the Owner and Engineer shall not be liable to the Contractor for any claims, costs, losses or damages sustained by the Contractor on or in connection with any other project or anticipated project.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice shall be given by the Contractor to the Engineer within 7 days of its commencement. The failure to give such notice shall constitute an irrevocable waiver of the Claim. In the case of a continuing delay only one Claim is necessary.

§ 15.1.5.1.1 An application for extension of time must set forth in detail the nature of the alleged cause of delay, the dates upon which such cause of delay began and ended, the number of days attributable to each of such causes, and the probable effect on the previously approved progress schedule.

§ 15.1.5.1.2 Failure to strictly comply with these requirements may be deemed sufficient cause to deny an extension of time.

§ 15.1.5.1.3 The Owner shall not be liable to the Contractor and/or any Subcontractor for claims or damages of any nature caused by or arising out of delays. The sole remedy against the Owner for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be subject to the claims procedure set forth herein. Except to the extent, if any, expressly prohibited by law, the Contractor expressly agrees not to make and hereby waives any claim for damages for delay, including, but not limited to, those resulting from increased labor or material, directions given or not given by the Owner or Engineer, including scheduling and coordination of the Work; the Engineer's preparation of drawings and specifications or the Engineer's review of shop drawings and requests for instructions; or, on account of any delay, obstruction or hindrance for any cause whatsoever by the Owner Engineer or any other contractor on the Project whether or not foreseeable or anticipated. The Contractor agrees that its sole right and remedy therefore shall be an extension of time, if appropriate. It is emphasized that no

monetary recovery may be obtained by the Contractor for delay against the Owner or Engineer based on any reason and that the Contractor's sole remedy, if appropriate, is additional time.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. In planning its construction schedule within the agreed Contract Time, it shall be assumed that the Contractor has anticipated the amount of adverse weather conditions normal to the site of the Work for the season or seasons of the year involved. Only those weather delays attributable to other than normal weather conditions will be considered by the Engineer.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives any and all claims for consequential damages of any kind and nature arising out of or relating to this Contract. This waiver of consequential damages shall survive termination of the Contract.

§ 15.1.7 The Owner shall not be liable to the Contractor and/or Subcontractor for financial Claims or monetary damages of any nature caused by or arising out of delays. The sole remedy against the owner for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be subject to the Claims procedure set forth herein. Except to the extent, if any, expressly prohibited by law, the Contractor expressly agrees not to make and hereby waives any Claim for damages for delay, including, but not limited to, those resulting from increased labor or material costs; directions given or not given by the Owner or Engineer, including scheduling and coordination of the work; the Engineer's preparation of drawings and specifications or review of shop drawings and requests for instruction(s); or, on account of any delay, obstruction, or hindrance for any cause whatsoever by the Owner or Engineer, or any other contractor on this Project, whether or not foreseeable or anticipated. The Contractor agrees that its sole right and remedy therefore shall be an extension of time if appropriate. IT IS EMPHASIZED THAT NO MONETARY RECOVERY MAY BE OBTAINED BY THE CONTRACTOR FOR DELAY AGAINST THE OWNER OR ENGINEER BASED ON ANY REASON AND THAT THE CONTRACTOR'S SOLE REMEDY, IF APPROPRIATE, IS ADDITIONAL TIME.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3 and 10.4, may, upon the written request of either the Owner or the Contractor, be referred to the Initial Decision Maker for initial decision. The Engineer 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 binding dispute resolution of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered, provided, with respect to Claims submitted more than one year after payment is due, the decision by the Engineer shall not be a condition precedent to litigation, and the Claim need not be submitted to the Engineer. 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 such request, and shall either (1) provide a

response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim 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 of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to binding dispute resolution.

§ 15.2.6 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.

§ 15.2.7 Within 10 days of a written request, the Contractor will make available to the Owner or its representative books, records, or other documents in its possession or to which it has access relating to a Claim and shall require its Subcontractors, regardless of tier, and materialmen to do likewise.

§ 15.3 MEDIATION

[Intentionally Omitted]

§ 15.4 ARBITRATION

[Intentionally Omitted]

§ 15.4.4 CONSOLIDATION OR JOINDER

[Intentionally Omitted]

ARTICLE 16 SPECIAL CONDITIONS

§ 16.1 Equal Opportunity

§ 16.1.1 The Contractor shall maintain policies for equal employment opportunity for construction employment. During performance of the Agreement, the Contractor agrees as follows:

§ 16.1.2 The Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to insure that all applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship and on-the-job training.

§ 16.1.3 The Contractor will post and keep posted in conspicuous places, for employees and applicants for

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employment, notices obtained by the Contractor from the New York State Division of Human Rights as set forth in the General Regulations of that Division at 9 NYCRR 466.1(a), such conspicuous places to be as defined in 9 NYCRR 466.1(b), and such other postings as that Division may require with respect to New York State's laws, codes, rules, and regulations governing discrimination in employment.

§ 16.1.4 The Contractor will state in all Solicitations or Advertisements for employees placed by, or on behalf, of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color or national origin.

§ 16.1.5 The Contractor will comply with provisions of Sections 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the Contractor's books, records and accounts by the Owner, the State Commissioner of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these nondiscrimination clauses and such sections of the Executive Law and Civil Rights Law.

§ 16.1.6 The Contractor will send to each Labor Union, or representative of worker, with which it has, or is bound by a collective bargaining or other Agreement or understanding notices obtained from the State Commissioner of Human Rights, advising such Labor Union or representative of the Contractor's Agreement under requirements of this Article. If the Contractor was directed to do so by Owner as Part of the Bid or negotiation of the Agreement, the Contractor shall request such Labor Union or representative to furnish him with a written statement that such Labor Union or representative will not discriminate because of race, creed, color or national origin and that such Labor Union or representative either will affirmatively cooperate within the limits of its legal and contractual authority in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment accordance with the purposes and provisions of these non-discrimination clauses. If such Labor Union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the Owner and State Commissioner of Human Rights of such failure or refusal.

§ 16.1.7 The Agreement may be forthwith canceled, terminated or suspended in whole, or in part, by Owner upon the basis of a finding made by the State Division of Human Rights, that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future Contracts made by, or in behalf of, the State, or Authority or Agency of the State, or Housing Authority or an Urban Renewal Agency, or Contracts requiring the approval of the Commissioner of Housing and Community Renewal, until it has satisfied the State Division of Human Rights, that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such findings shall be made by the State Division of Human Rights after conciliation efforts by the Division have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Division, notice thereof has been given to the Contractor, and an opportunity has been afforded by the Contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked immediately of, or in addition to sanction in remedies otherwise provided by law. If the Agreement is canceled or terminated under provisions of this Article, in addition to other rights of Owner provided in the Agreement upon its breach by the Contractor, the Contractor will hold Owner harmless against any additional expenses or costs incurred by Owner in completing the work or in purchasing the services, materials, equipment or supplies contemplated by Agreement and Owner may withhold payments from the Contractor in an amount sufficient for this purpose and recourse may be had against authority on the Performance Bond if necessary.

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16.1.8 The Contractor will include the provisions of this Article in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontractor or purchase order as the State Division of Human Rights or the Owner may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or a vendor, as a result of such direction by the State Division of Human Rights, the Contractor shall promptly so notify the Owner and the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

§ 16.2 Waiver of Immunity

§ 16.2.1 The Contractor hereby agrees to the provisions of Paragraph 139-a and 139-b of the NYS Finance Law and

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Section 103-a of the NYS General Municipal Law, which require that upon the refusal of a person, when called before a grand jury, head of a State department, temporary State commission or other State agency, or the organized crime task force in the Department of Law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

§ 16.2.1.1 Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with New York State or any public department, agency or official thereof for goods, work or services, for a period of five years after such refusal.

§ 16.2.1.2 Any and all contracts made with the State of New York, or any public department, agency or official thereof since the effective date of this law, by such person, and by an firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by the State of New York without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the State of New York for goods delivered or work done prior to the cancellation or termination shall be paid.

§ 16.3 Non-Collusive Clause as Required by NYS General Municipal Law Section 103-d

§ 16.3.1 Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.

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

§ 16.3.2.1 The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competitions, as to any matter relating to such prices with any other bidder or with any competitor.

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16.3.2.2 Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.

§ 16.3.2.3 No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

§ 16.3.3 A bid shall not be considered for award nor shall any award be made where requirements of this Article have not been complied with; provided however, that in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which set forth in detail the reasons therefore. Where requirements of this Article have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing agent of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

§ 16.3.4 The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, b) has informed prospective customers of proposed, or pending, publication of new or revised price list for such items, or (c) has sold the same items to other customers at the same prices being bids, does not constitute a disclosure within the meaning of this Article.

§ 16.3.5 Any bid hereafter made to any political subdivision of the state or any public department, agency official thereof by a corporate bidder for work or services performed or to be performed or good sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the

certification referred to in subdivision one of this section, shall be deemed to have been authorized shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

§ 16.4 Consent to Suit and Waiver of Privity Defense

The Contractor agrees that it waives the defense of privity of contract as between itself and each Prime Contractor. In the event that an act or omission by a Prime Contractor causes impact, damage or loss in any form to another Prime Contractor, then the Prime Contractor responsible in whole or in part for such impact, damage or loss agrees it is directly responsible and liable to the injured Prime Contractor. Both the injured Prime Contractor and the Prime Contractor responsible in whole or in part for such injury agree that this waiver of the defense or privity of contract permits and requires the injured Prime Contractor to commence an action or suit directly against the responsible Prime Contractor. The Owner and Engineer shall not be parties to such suit. Each Prime Contractor waives and relinquishes any right and claim as against the Owner, to the extent such claim is caused or contributed to by a Prime Contractor.

§ 16.5 In accordance with Section 109, General Municipal Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract for the Work herein specified, or its right, title, or interest therein, or its power to execute the Contract, to any other person or corporation without the previous consent in writing of the Board of Trustees. If the Contractor, without previous written consent of the Board of Trustees, shall assign, transfer, convey, sublet, or otherwise dispose of the Contract for the Work specified herein, or its power to execute the Contract, to any other person or corporation, the Board of Trustees shall be relieved of and discharged from any and all liability and obligations growing out of the Contract to the Contractor, and to the persons or corporation to which the Contract shall have been assigned, transferred, conveyed, sublet, or otherwise disposed of, and the Contractor, and its assignees, transferees, or sublessees shall forfeit and lose all monies theretofore earned under the Contract, except so much as may be required to pay its employees. The above provisions of this paragraph shall not hinder, prevent, or affect any assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.

ARTICLE 17 NEW YORK STATE LABOR LAW REQUIREMENTS

§ 17.1 Working Hours

§ 17.1.1 The Contractor specifically agrees as required by the New York State Labor Law ("Labor Law"), Sections 220 and 220-d, as amended, that:

- .1** No laborer, worker, or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or any part of the work included in the Contract Documents shall be permitted or required to work more than eight hours in any one calendar day or more than five (5) days in any one week, except to the extent permitted in the case of extraordinary emergencies described in the Labor Law.
- .2** The wages to be paid to each laborer, worker, or mechanic in the employ of the Contractor, Subcontractor, or other person doing or contracting to do all or any part of the work included in the Contract Documents for a legal day's work shall be not less than the prevailing rate of wages as defined by the Labor Law.
- .3** Each laborer, workman or mechanic employed by the Contractor, a Subcontractor, or other person doing or contracting to do all or any part of the work included in the Contract Documents shall be provided the supplements required by Article 8 of the Labor Law.
- .4** The minimum hourly rate of wage to be paid shall be not less than that stated in the General Conditions, and shall be as designated by the industrial Commissioner.
- .5** The Contractor's and any Subcontractor's or other person's filing of payrolls in a manner prescribed by subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to the to the Owner's payment of any sums due and owing to the Contractor, Subcontractor or other party for work done on or with respect to the Project.

§ 17.2 Wage Rates

§ 17.2.1 The Contractor specifically agrees, as required by the Labor Law, that the Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

- .1** the prevailing wage rates as provided in Labor Law Section 220(3) as amended, or,
- .2** the minimum wage rates as provided in Labor Law Section 220-d, as amended.

§ 17.2.2 The Contractor shall comply with Prevailing Wage Rates as issued by the State of New York Department of Labor for the location and duration of this Project. Current wage rates for this project are included in the Project

Manual as part of the Contract Documents. The Contractor is responsible to regularly review "Prevailing Wage Schedules/Updates" available on the "Prevailing Wage/Public Work" link on State of New York Department of Labor "Business in New York" web page (www.labor.state.ny.us) to identify and implement any applicable changes to Prevailing Wage Rates during the Project.

§ 17.2.3 The Contractor shall comply with all the requirements of the Labor Law Section 220-a, as amended, regarding mandatory submission of certified payroll records, which shall be included with each application for payment.

§ 17.3 Anti-Discrimination

§ 17.3.1 The Contractor specifically agrees, as required by the provisions of Section 220e of the Labor Law, as amended, that:

- .1** In the hiring of employees for the performance of work under the Contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall be reason of race, creed, color, sexual orientation, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- .2** No contractor, subcontractor, nor any person on its behalf, shall in any manner, discriminate or intimidate any employee hired for the performance of work under the contract on account of race, creed, color, sexual orientation, or national origin.
- .3** There may be deducted from the amount payable to the Contractor by the Owner under the contract a penalty at fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract; and
- .4** The Contract may be canceled or terminated by the Owner, and all monies due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract.

ARTICLE 18 GENERAL MUNICIPAL LAW REQUIREMENTS OF THE STATE OF NEW YORK

§ 18.1 Payment of Contractors and Subcontractors

§ 18.1.1 The Contractor specifically agrees it is bound by Section 106b of the New York General Municipal Law.

ARTICLE 19 SPECIFIC CONFORMANCE TO THE LAWS OF THE STATE OF NEW YORK

§ 19.1 Statutory Requirements

§ 19.1.1 The parties agree that each is bound to the provisions of the laws of the State of New York governing bidding and contracting for public improvement projects, including but not limited to applicable provisions of the General Obligations Law, Labor Law, and General Municipal Law. To the extent any provisions in the Contract Documents conflict with any provisions of New York Law, the statutory provisions shall prevail and the conflicting provisions in the Contract Documents shall be deemed to conform to the statutory provisions.

§ 19.1.2 To the extent the laws of the State of New York governing bidding and contracting for public improvement projects mandate inclusion of specific terms in contracts for such improvements, but which are not already included in these General Conditions, such terms shall be deemed incorporated into these General Conditions.

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Ossining Public Library
Boiler Plant and HVAC Upgrades
53 Croton Avenue, Ossining, NY 10562

...

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

...

Ossining Public Library
53 Croton Avenue
Ossining, NY 10562
T. 914.941.2416

...

THE ARCHITECT;ENGINEER:

...

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

...

OLA Consulting Engineers
50 Broadway, Suite 2
Hawthorne, NY 10532
T. 914.747.2800

...

4 ARCHITECTENGINEER

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ARTICLE 1 GENERAL PROVISIONS

...

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, Agreement, and include the Invitation (Advertisement) To Bid, Instructions To Bidders, Supplementary Instructions To Bidders (if any), Bid Form (including Unit Prices, if any) executed by Bidder, the Non-Collusive Bidding Certification (if any) executed by Bidder, the Agreement Between Owner and Contractor ("Agreement" or "Contract"), General Conditions of the Contract for Construction, any Supplementary Conditions, Specifications, Detail Book, Drawings, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued or negotiated after receipt of bids or 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 requirements. Engineer.

...

§ 1.1.2 THE CONTRACT AGREEMENT

...

The Contract Documents form the Contract for Construction. The ~~Contract Agreement~~ represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The ~~Contract Agreement~~ may be amended or modified only by a Modification. The Except as expressly provided herein, 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 Engineer or the Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's Engineer or the Engineer's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Agreement intended to facilitate performance of the Architect's duties. Engineer's duties. Where the term "Agreement," "Prime Contract," or "Contract" is used in the General Conditions and other Contract Documents, it shall mean the Agreement between the Owner and each Contractor.

...

The term ~~"Work"~~ "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. To the extent that the Work includes the demolition and removal of existing structures and improvements, the term "construction" as used in the Contract Documents shall be interpreted and construed to include such demolition and removal services.

...

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. The Drawings are illustrative only. All dimensions and quantities shall be verified by the Contractor. The Drawings are as listed within the "List of Drawings" provided with the drawing set. All Work under the Contract shall be executed in accordance with the Contract Documents, which are complimentary as described herein. The "List of Drawings" is incorporated in the Standard Form of Agreement Between the Owner and the Contractor.

...

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 Engineer~~ and the Engineer'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.

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The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section ~~14.2.2~~14.2.2.

...

§ 1.1.9 [Intentionally Omitted]

...

§ 1.1.10 Miscellaneous Definitions

...

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

...

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

...

§ 1.1.10.3 Except as otherwise explicitly provided, the words “approved” or “approval” shall mean the written approval of the Engineer.

...

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

...

§ 1.1.10.5 The term “as indicated” or “as shown” shall mean “as indicated in the Contract Documents.”

...

§ 1.1.10.6 The term “include” in any form other than “inclusive” is non-limiting and not intended to mean “all inclusive.”

...

§ 1.1.10.7 The phrase “persistently fails” and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, that cause the Owner and/or the Owner’s Authorized Representative to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in what it or they reasonably deem not to be in substantial compliance with the requirements of the Contract Documents.

...

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

...

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

...

§ 1.1.10.10 The term “product” includes materials, systems, equipment, and other items to be incorporated into the Work.

...

§ 1.1.10.11 The term “provide,” unless specifically noted otherwise, shall mean furnish and install and shall include, without limitation, all labor, supervision, materials, equipment, transportation, services and other items required to complete the Work. The word “complete” shall refer to a working system ready to serve the designated intent. Where items are specified by the use of a reference standard not bound in the Specifications, the date of the reference standard shall be the latest edition at the time of signing the Contract, except as specifically indicated otherwise

...

§ 1.1.10.12 The term “replace” or similar term shall mean “restore,” “renew,” “make good,” “reconstruct,” or “as applicable using new product.”

...

§ 1.1.10.13 The Contract Time is the period of time specified in the Agreement for completion of the Work.

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

...

§ 1.1.10.15 “Wiring” shall be understood to mean wires or cables with conduit, fittings, boxes, etc., installed complete.

...

§ 1.1.10.16 “Piping” shall be understood to mean all pipes, fittings, nipples, valves and all accessories connected thereto.

...

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

...

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of work or (2) comply with the more stringent requirements; either or both in accordance with the Engineer's interpretation. After execution of the Agreement and during the course of the Work should any ambiguities, discrepancies, omissions, or apparent errors be found on the drawings or in the specifications to which the Contractor has failed to call attention prior to submitting its bid, then the intention of the Contract Documents is to be interpreted by the Engineer, whose decision as to the intent shall be final, and the Contractor agrees to carry out the Work in accordance with the decision of the Engineer. Until such time as an interpretation is issued, it shall be assumed that the Contractor has based its bid on providing the Work in the better quality, greater quantity, or most expensive manner, for Work complete in every detail, even though every item necessarily involved is not particularly mentioned. If necessary measurements are missing or Work specified or shown in the Contract documents is obviously incorrect or impossible to execute, or figures fail to check, the Contractor shall call these facts to the attention of the Engineer for interpretation as described herein. On the Drawings, given dimensions shall take precedence over scaled measurements and large scale drawings over small scale drawings. The Contractor shall not scale Drawings. The Contractor shall notify the Engineer if additional dimensions are needed. The Contractor shall field verify all dimensions. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted to the Engineer for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for review by the Engineer before making the change. Where the Contractor perceives a conflict, it shall inform the Engineer and Owner thereof and request a decision from the Engineer, which shall be promptly communicated by the Engineer to the Contractor so as not to cause any delay in the performance of the Work. Any Work performed after perceiving the conflict and prior to resolution by the Engineer shall be at the Contractor's risk. The terms and provisions of this Section, however, shall not relieve the Contractor of any of the obligations set forth elsewhere herein.

...

§ 1.2.1.1 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) 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, any phased construction plan and (7) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 1.2.1.1.

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

...

§ 1.2.4 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 Subcontractors, if any.

...

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

...

.1 Change Orders;

...

.2 The Agreement between Owner and Contractor;

...

.3 Addenda, with those of later date having precedence over those of earlier date;

...

.4 The Supplementary, Special, or other Conditions as may be part of the Contract Documents;

...

.5 The General Conditions of the Contract for Construction;

...

.6 Drawings and Specifications. In the case of an inconsistency between Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be

provided in accordance with the Engineer's interpretation. If a work item or component is present in the Drawings but not the Specifications, or vice versa, that work or component shall be provided.

...

§ 1.2.6 In the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of work or (2) comply with the more stringent requirements; either or both in accordance with the Engineer's interpretation. After execution of the Agreement and during the course of the Work should any ambiguities, discrepancies, omissions, or apparent errors be found on the drawings or in the specifications to which the Contractor has failed to call attention prior to submitting its bid, then the intention of the Contract Documents is to be interpreted by the Engineer, whose decision as to the intent shall be final, and the Contractor agrees to carry out the Work in accordance with the decision of the Engineer. Until such time as an interpretation is issued, it shall be assumed that the Contractor has based its bid on providing the Work in the better quality, greater quantity, or most expensive manner, for Work complete in every detail, even though every item necessarily involved is not particularly mentioned. If necessary measurements are missing or Work specified or shown in the Contract documents is obviously incorrect or impossible to execute, or figures fail to check, the Contractor shall call these facts to the attention of the Engineer for interpretation as described herein. On the Drawings, given dimensions shall take precedence over scaled measurements and large scale drawings over small scale drawings. The Contractor shall not scale Drawings. The Contractor shall notify the Engineer if additional dimensions are needed. The Contractor shall field verify all dimensions. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted to the Engineer for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for review by the Engineer before making the change. Where the Contractor perceives a conflict, it shall inform the Engineer and Owner thereof and request a decision from the Engineer, which shall be promptly communicated by the Engineer to the Contractor so as not to cause any delay in the performance of the Work. Any Work performed after perceiving the conflict and prior to resolution by the Engineer shall be at the Contractor's risk. The terms and provisions of this Section, however, shall not relieve the Contractor of any of the obligations set forth elsewhere herein.

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

...

§ 1.2.8 The Contract Drawings are intended to show the general arrangement, design, and extent of the Work and are partly diagrammatic. They are not intended to be scaled for any purpose, or to serve as shop drawings. The Contractor and its Subcontractors will cooperate with all other contractors and their respective subcontractors in determining the construction of systems, running of pipe, and locating equipment. The Contractor agrees that the failure to repeat typical details, figures, or notes on all Contract Drawings or other Contract Documents will not be a basis for claims for additional cost or time.

...

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

...

§ 1.2.8.2 If conflicting conditions or interferences develop, the Contractor and its Subcontractors will confer with the other contractors and their respective subcontractors whose work is affected to determine a solution acceptable to all interested parties. The suggested solution shall be submitted to the Engineer for comment and, if necessary, written approval.

...

§ 1.2.9 The Contract Documents intend a first class finished product of such character and quality as described in and reasonably inferred from the Contract Documents. The Contractor will perform its Work to be complete and operable, fitting with the work of other contractors and the Owner, and in compliance with best construction practices and the ordinances, codes, and regulations of all bodies or persons having governmental or regulatory authority over the Contractor and its Work.

...

§ 1.2.10 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.

...

§ 1.2.11 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 reference shall have the force and effect as though reproduced therein, and upon entering into the Contract the Contractor acknowledges its familiarity with those pertaining to its Work.

...

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" "all" and "any" and articles such as "the" and "an," "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.

...

§ 1.5.1~~The Architect~~

PAGE 16

~~and the Architect's~~ As to the Contractors, Subcontractors, and sub-subcontractors, the Engineer and the Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the

Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, ~~Sub-subcontractors, sub-subcontractors,~~ and material or equipment 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 this Project is not to be construed as publication in derogation of the ~~Architect's or Architect's Engineer, or Engineer's~~ consultants' reserved rights.

...

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect and the Architect's consultants, Engineer and the Engineer's consultants.~~ Nothing in this Section 1.5 shall be construed to alter the rights of the Owner toward the Instruments of Service and other documents prepared by the Engineer and the Engineer's consultants as set forth in the agreement between the Owner and the Engineer.

...

§ 1.5.3 The Contractor may not reproduce the Contract Documents in whole or part for use as shop drawing backgrounds without the prior written consent of the Engineer. If consent is given, the Engineer will determine the extent that the Contract Documents may be used in the preparation of shop drawings.

...

§ 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 Architect~~ Article 4, the Engineer does not have such authority. The term "~~Owner~~" "Owner" means the Owner or the Owner's authorized representative.

...

§ 2.1.2 [Intentionally Omitted]

...

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

...

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the

Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

...

§ 2.2.2 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 ~~§2.2.1 All permits and fees, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.~~ facilities are the responsibility of the Contractor under the Contract Documents with the exception that, unless otherwise provided under the Contract Documents, the Owner shall secure and pay for the building permit.

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§ 2.2.3 ~~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. **2.2.2** ~~The Owner~~ shall make available for inspection, upon request, that field survey or testing information of existing conditions that is known to be available and that is held by the Owner at its offices. Such records and documents are not Contract Documents, and the Owner makes no representation as to their accuracy or completeness. **Notwithstanding the foregoing, information furnished by the Owner in the form of surveys, subsurface investigation reports, soil borings, and other material of a similar nature, is for general information only and is not a guarantee of the completeness or accuracy of such information, unless specifically noted otherwise herein. The Contractor shall verify all existing grades, conditions, and dimensions of existing physical conditions and structures and shall report any inconsistencies in writing to the Engineer. 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**

...

§ 2.2.4 ~~The 2.2.3~~

...

~~Owner shall~~ To the extent in the Owner's possession, the Owner may 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.

...

§ 2.2.5 ~~2.2.4~~ Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Contractor will be furnished, free of charge, up to three (3) sets of Drawings, Project Manuals, Detail Books, and Addenda materials for their use and the use of their Subcontractors during construction. Any additional sets or partial sets will be provided as required for the cost of printing, postage, and handling. The number of sets furnished for bidding purposes is set forth in the Invitation To Bid (Advertisement). Payment for additional sets or partial sets shall be due upon receipt of the documents. For expediency, at the discretion of the Engineer, Contractor may be directed to pick up documents at the Project designated printing facility. This practice will not be permitted without authorization of/and coordination by the Engineer. Electronic drawing files, AutoCAD format, may be available, at the discretion of the Engineer, for a cost of \$25.00 per drawing. Should Contractor request this service, the Contractor will be required to sign a disclaimer. Request for electronic files must be made in writing to the Engineer's office. This request must include a specific list of drawings required in this format. In response, the Engineer will verify the

drawings requested and will forward the disclaimer for signature. Electronic files will be released upon receipt of payment and a fully executed disclaimer form.

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...

~~If~~ If, as determined by the Owner or Engineer, the Contractor fails to correct Work ~~that~~ which 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~~ persistently 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 fails to remove and discharge (within ten days) any lien filed upon Owner's property by anyone claiming by, through, or under Contractor, or disregards the instruction of the Engineer or Owner when based on the requirements of the Contract Documents, the Owner, by written order signed personally or by an agent so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; eliminated (as determined by the Owner or its agency); however, the right of the Owner to stop the Work shall not give rise to a ~~ta~~ duty on the part of the Owner to exercise this right either on its behalf or for the benefit of the Contractor or any other person or entity, ~~except to the extent required by Section 6.1.3.~~ entity. The Contractor shall stop work upon receipt of said order. The written order described herein above may be delivered to and shall be deemed received by the Contractor in the same manner as set forth in Section 2.4.1. This right is in addition to, and not in restriction of, the Owner's other rights herein, including, but not limited to, the Owner's rights under Section 12.2.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three (3) work day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner ~~may, may~~ after such three (3) work day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the ~~Architect's additional services~~ Engineer's and their respective consultants' additional services and other expenses made necessary by such default, neglect or failure. Such Change Order or Construction Change Directive shall be deemed to have been executed by the Contractor, whether or not actually signed by the Contractor. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. shall be equally binding upon the Contractor's performance and payment bond surety. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to stop the Work pursuant to this Section 2.4 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

...

§ 2.4.1 Notwithstanding anything contained in the Contract Documents to the contrary, written notice pursuant to paragraph 2.4 shall be deemed received by the Contractor: (a) if by personal delivery, on the date of personal delivery to any officer, employee, or agent of the Contractor; (b) if by fax, on the date of faxing to the last known fax number of the Contractor; (c) if by courier service providing for overnight delivery to the Contractor's last known business address, the day following deposit with the courier service; or (d) if by registered, certified, or first class mail to the last known business address of the Contractor, five days after mailing. The Owner shall have the right to choose whichever method of delivery or such written notice it wishes.

...

§ 2.5 Extent of Owner's Rights

...

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

...

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

...

§ 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" Agreement. The term "Contractor" means the Contractor or the Contractor's authorized representative.

...

§ 3.1.3 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 Architect in the Architect's Engineer in the Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

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

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the 3.2.1.1 The Contractor and each Subcontractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3, 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 2.2 and shall at once report in writing to the Engineer errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or the Engineer 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 Engineer. 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 Engineer, the Contractor shall assume full responsibility for such performance and shall bear sole responsibility for the costs for correction.

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§ 3.2.1.2 The obligations of the Contractor under Section 3.2.1.1 and this Section 3.2.1.2 are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering imposing an affirmative obligation on the Contractor to discover errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's design information in the Contract Documents. The Contractor's review of the Contract Documents is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically professional unless otherwise specifically so provided in the Contract Documents.

...

§ 3.2.3 3.2.1.3 Failure by the Contractor to promptly report any errors, inconsistencies, or omissions in the Contract Documents discovered by the Contractor, or which the Contractor reasonably should have known, shall constitute 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 § 3.2.2 All Contractors submitting proposals shall be presumed to have examined the site to consider fully all conditions which may have a bearing on the Work and to have accounted for these conditions in their proposals. The Contractor is deemed to be a qualified expert in the systems and construction requirements of the Work of its Contract. The Contractor hereby specifically acknowledges and declares that the Contract Documents are full and complete, are sufficient to have enabled it to determine the cost of the Work, and that the Drawings, the Specifications, and all addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, building codes and regulations, and otherwise to fulfill all of its obligations under the Contract Documents. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Engineer at once. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Engineer, or the work installed by other Contractors, is not guaranteed by the Engineer or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, 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 all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner. Except as to any reported errors, inconsistencies or omissions, and except as to concealed or unknown conditions, by executing the Agreement, the Contractor represents to the Owner and the Engineer that the Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedure and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to Work; (3) the requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work

...

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

...

§ 3.2.4 The Contractor may submit Requests for Information (“RFI”) to the Engineer 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 Engineer 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 Engineer for RFI responses that in the opinion of the Engineer 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.

...

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

...

§ 3.2.6 The Contractor shall promptly report to the Architect any nonconformity Engineer any nonconformity with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities discovered by or made known to the Contractor as a request for information submitted to the Engineer in such form as the Architect Engineer may require.

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§ 3.2.4-3.2.7 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect Engineer issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, this Section 3.2, the Contractor shall make Claims a Claim as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, this Section 3.2, the Contractor shall pay such costs and damages to the Owner, including reasonable attorneys’ fees incurred by the Owner as a result of such failure, 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 the Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

...

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

...

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

...

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

...

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

...

§ 3.2.12 When required, off-site storage shall be the responsibility of the Contractor.

...

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and ~~attention~~-attention, and shall complete the Work in a good and workmanlike manner in accordance with the Contract Documents. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, ~~sequences~~-sequences, safety, safety precautions, and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific ~~instructions~~-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 thereof and, except as stated below, shall be 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 and ~~Architect~~ the Engineer and shall not proceed with that portion of the Work without further written instructions from the ~~Architect~~ If Engineer.

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the Contractor is then instructed to proceed with the required means, methods, techniques, sequences §
3.3.1.1 Laying Out the Work: Each Contractor shall carefully lay out its Work in accordance with existing and new Work and shall verify all lines and levels indicated in the Contract Documents that affect its Work. Adjustments required to suit field conditions shall be made only after Engineer's review. Each Contractor shall be responsible for the accuracy of layout and shall correct at its own expense any Work that its forces have laid out incorrectly. Each Contractor shall furnish and erect all necessary batter boards, establish all lines and levels in connection therewith,

and run all subsequent lines and levels as the Work progresses in order to assure careful and accurate Work true to the proper lines in accordance with the Contract Documents. Any batter boards, monuments, or marks of reference, which may for any reason become disturbed or destroyed, whether such displacement or destruction is caused by carelessness, accident, or by the elements, shall at all times, be promptly and accurately reestablished by such Contractor. Each Contractor shall establish center lines, elevations and location of its Work when such are required by other Contractors to coordinate the location of their own Work.

...

§ 3.3.1.2 The Contractor shall review all specified construction or installation procedures, including those recommended by manufacturers, and advise the Engineer (1) if the specified procedure deviates from good construction practice, (2) if following the procedure will affect any warranties, including the Contractor's general warranty, (3) of any objections the Contractor may have to the procedure, and (4) of proposals for alternative procedures which the Contractor will warrant.

...

without acceptance § 3.3.1.3 The Contractor's obligations under the Contract Documents shall include, without limitation, the following:

...

of changes proposed by .1 Review of all specified construction and installation procedures, including, without limitation, those recommended by manufacturers.

...

the Contractor, .2 Advising the Engineer:

...

.1 if a specified procedure deviates from best construction practice;

...

.2 if following a procedure will affect any warranties, including the Contractor's

...

general warranty; or

...

.3 of any objections the Contractor may have to a procedure.

...

the Owner .3 Proposing alternative procedures, as appropriate, which procedures shall be covered by the Contractor's warranty as described in Section 3.5 hereof; and

...

.4 The Contractor shall be solely responsible for any loss-responsible for organizing and conducting pre-installation conferences and must coordinate with the Engineer and the Owner.

...

or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures. § 3.3.1.4 Any or all Contractors working on the Project shall attend a preconstruction conference(s) or meeting(s) as deemed necessary by the Owner or Engineer to coordinate all Work (e.g., demolition, installation, etc.).

...

§ 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. Subcontractors and other persons performing portions of the Work under a Contract or other arrangement with the Contractor.

...

§ 3.3.3 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 Engineer in its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

...

§ 3.3.4 Where equipment lines, piping, ductwork, and/or conduit are shown diagrammatically, the Contractor shall be responsible for the coordination and orderly arrangement of the various lines of piping and conduit included in the Work of its Contract. The Contractor shall coordinate the work of its Subcontractors and prevent all interferences between or among equipment, lines of piping, and architectural or engineering 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 be responsible for inspection of portions of Work the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

...

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

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

...

§ 3.3.8 The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body having jurisdiction over the project. Failure to obtain any permits, licenses or other approvals because of the failure of the Contractor to conform to this requirement shall not extend the Contract time, and the Contractor shall

not be entitled to any increase in the Contract Sum therefore. In addition, any additional costs and/or expenses of any nature incurred by the Owner as a result of the Contractor's failure to conform to this requirement shall constitute a charge against the Contractor's Contract.

...

§ 3.3.9 Shut Downs: Such work as connections to existing sewers, plumbing, heating, and electrical systems shall be coordinated at a time agreeable to the Owner and the Engineer, and shall be determined and agreed to well in advance of the actual performance of such work so as to interfere as little as possible with the operation and use of existing facilities. Shut downs must be coordinated through the Engineer. The continued uninterrupted operation of all facilities of the building is essential. If any existing facilities must be interrupted, the Contractor for the Work shall provide all necessary temporary facilities and connections necessary for maintaining these existing facilities at no increase in the Contract Sum except as otherwise specified. No mechanical, heating, plumbing, sprinkler, or electric service shall be interrupted at any time except as approved in advance by the Owner or when the buildings are not occupied and shall be coordinated with the Owner, as well as the Engineer. All communication systems must be maintained without interruption. As much related work as possible shall be performed prior to shut downs, so as to minimize the period of shut down. All material, equipment, and manpower necessary in the performance of a shut down shall be on site prior to interruption of service.

...

§ 3.3.10 Overtime: Each Contractor shall take note that there is Work required to be done under its Contract in other spaces adjacent to or distant from areas being altered, the Owner's use of facilities cannot be disturbed except by specific approval of the Owner. Such Work, as making connections, revisions, additions to existing mechanical and electrical lines or equipment, the cutting of new openings or other work of any sort, must be done at times as directed by the Owner when existing facilities are not in use and at no additional cost to the Owner

...

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and timely 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. The Contractor shall work continuously and expeditiously through completion of the Work. Time is of the essence.

...

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

...

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, Engineer in accordance with the Contract Documents, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect-Engineer and in accordance with a Change Order or Construction Change Directive.

...

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

...

§ 3.4.3.1 If stored off site, the Contractor shall furnish proof of title by Owner and provide a Certificate of Insurance demonstrating adequate insurance coverage.

...

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

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

...

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

...

§ 3.4.4 At least 25% of the direct labor, materials, systems or equipment shall be provided by the Contractor. The unit measure (dollar value, unit price, schedule of value) utilized to determine the quantities of work, labor and material furnished by the Contractor shall be determined by the Engineer and shall be appropriate for the scope of work involved. Work performed by supervisory personnel, person above the level of foreman, or office personnel, all overhead costs, including bonds and certificates, shop drawings and similar items shall not count towards the percentage of work provided by the Contractor.

...

§ 3.4.5 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.

...

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

...

§ 3.4.7 The Contractor shall make every reasonable effort to avoid labor disputes and to insulate the Owner and Engineer from the effects of labor disputes should any arise. For the purposes of this Section, every

reasonable effort shall include, but not necessarily be limited to:

...

.1 requiring employees, Subcontractors, suppliers and others to use reserve gates which shall be established for the Project;

...

.2 rearranging work schedules for the Contractor's Work or the work of its Subcontractors; and

...

.3 including in Contractor's agreements with its Subcontractors the right to fully implement all provisions of this Section.

...

§ 3.4.7.4 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent execution of the Work, and the Contractor shall maintain labor peace for the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Time or the Contract Sum.

...

§ 3.4.8 The Contractor and its Subcontractors employed upon the Work will be required to conform with all labor laws and to all other laws, ordinances, and legal requirements now or hereafter applicable to the Work and/or the construction area.

...

§ 3.4.9 Employees of the Contractor or Subcontractors whose work is unsatisfactory to the Owner or the Engineer, or considered by them to be unskilled or otherwise objectionable, will be immediately dismissed from the Project upon notice from the Owner or Engineer. Those dismissed employees shall be immediately replaced by the Contractor so as not to delay progress of the work and at no additional cost to the Owner.

...

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

...

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

...

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

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§ 3.4.13 Substitutions

1. § 3.4.13.1 Substitutions may be proposed by the Contractor after award of Contract if, and only if, all specified materials, products or equipment are removed from, or become unavailable in, the market place after execution of the Contract and only at “no change” or “credit” to the Contract Sum.

...

§ 3.4.13.2 By making requests for substitution based on Section 3.4.13.1 above, the Contractor (1) represents that it has investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; (2) represents that the Contractor will provide the same warranty for the substitution that the Contractor would for the specified; (3) certifies that the cost data presented is complete and includes all related costs under this Contract except the Engineer's redesign costs, and waives all claims for additional costs related to the substitution which subsequently becomes apparent; (4) represents that it will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects; (5) represents that it will reimburse the Owner for additional costs from claims by other Contractors resulting from incorporation of any requested substitution; and (6) represents that it will reimburse the Owner for all additional costs billed by the Engineer or its consultants for the review of the substitution request(s), any redesign of the Work of this Contractor or associated Contractors, additional site visits related to the substitution request and for the work to prepare Change Directives or Change Orders.

...

§ 3.4.13.3 Any request for substitution must satisfy these additional requirements:

...

- .1 The materials, products and equipment described in the Contract Documents establish the standard of required quality, function, dimension and appearance expected. Substitution requests will be considered only if these standards are met, or exceeded, and the Engineer and Owner subsequently approve the substitutions.

...

- .2 Each request for substitution shall be submitted on forms provided by the Engineer and shall include:

...

- .1 the name of the material, product or equipment item for which substitution is requested and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for a complete evaluation; and

...

- .2 a statement setting forth any changes in other materials, products, equipment or other Work that incorporation of the substitution would require, shall be included.

...

.3 The burden of proof of the merit of the proposed substitution is upon the proposer.

...

.4 The Engineer's decision of approval or disapproval of a proposed substitution shall be final and will be set forth in writing. Should the Engineer not approve the proposed substitution, the cost of the Engineer's and its consultant's review of any subsequent proposed substitutions for the material, product or equipment shall be deducted from the Contract Sum.

...

.5 The Contractor shall represent and warrant to the Owner that any and all substituted materials are proper and appropriate for the purpose for which the Contractor intends to use them.

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§ 3.5.1 The Contractor warrants to the Owner and Architect-Engineer 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 with 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. requirements, including substitutions not properly approved and authorized, shall be considered defective. This warranty shall include all parts and labor both on and off the site, together with all necessary transportation and shipping charges. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, The Contractor will be responsible for and shall make good any defects due to faulty materials for two (2) years and two (2) years on labor after final payment has been made, except where the Contract Documents call for a longer period of time. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of the Owner. If required by the Engineer, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract Documents. The Contractor shall perform the Work in strict accordance with the Contract Documents and best industry practices. All materials are to be new, unless specified otherwise. The Contractor, at its expense, shall upon demand by the Owner or Engineer remove and replace materials not meeting specifications or materials failing to perform as represented or warranted by the manufacturer, regardless of whether incorporated into the Work. The Contractor shall promptly replace or correct any work or materials that the Owner or Engineer 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 otherwise prescribed by law.

...

§ 3.5.2 The Contractor warrants the Work and its performance to the Owner unconditionally. The Contractor shall perform all warranty obligations and responsibilities for the Work under the Contract Documents. The Contractor, at its own expense, shall remedy defects due to improper and/or defective workmanship or materials appearing within one year of the Contractor completing the Work or such longer period as may be set forth in the Contract Documents (the "Warranty Period"). Upon completion of the Work, the Contractor shall submit to the Owner all written warranties and guarantees from the Contractor's 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 assigned to the Owner. The Contractor acknowledges that its obligations to the Owner under this Section 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 or Engineer regarding any deficiency in the Work covered by this Section shall toll the Warranty Period until all corrections or remedial actions necessary hereunder have been taken with respect to such deficiency. The Contractor shall be responsible for all harm, costs and expenses caused by its failure to maintain equipment and materials installed hereunder through the Contractor's completion of the Project. The requirements of this Section shall continue notwithstanding the 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 otherwise prescribed by law.

...

§ 3.5.3 In emergencies occurring during the warranty/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 its forces arrive at the Work. Repair work not started within seven (7) days following notice to the Contractor of any defect may be considered an emergency.

...

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

...

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

...

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

...

§ 3.5.7 The warranty provided for in this Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy provided by law or required in the Contract Documents.

...

The § 3.6.1 Except as otherwise specified, the Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 Except as otherwise specified, all federal, state, and local taxes are to be included in the Contract Sum.

...

§ 3.6.3 Assessments and Taxes on Wages: Each Contractor shall pay and include in its proposal all costs and liabilities for the amounts assessed, or which may be assessed by the federal, state and local governments under any and all acts or laws upon the wages and salaries paid or to be paid all employees of the Contractor and its Subcontractors under this Contract.

...

§ 3.6.4 The Owner represents that it is an organization operated for purposes which make it exempt from New York sales and compensating use tax under Article 28 of the New York Tax Law. The Contractor is further advised that the Owner is exempt from payment of all state and local sales and compensating use taxes of the State of New York and its cities and counties on the Contractor's purchases of materials and supplies which are to be incorporated in and become integral component parts of the Owner's structures, buildings or real property, pursuant to the provisions of this Contract. Such taxes are not to be added to the Contract Sum, bid or costs to be reimbursed, as the case may be. This exemption does not, however, apply to tools, machinery, equipment or other property leased by or to the Contractor or a Subcontractor, or to supplies and materials which, even though they are consumed in the performance of this Contract, are not incorporated into the Owner's structures, buildings or real property. The Contractor and its Subcontractors shall be responsible for and shall pay any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment or other property and on all such unincorporated supplies and materials. The Owner shall deliver to the Contractor the appropriate exemption certificate required to be supplied by the Owner, and the Contractor, its Subcontractors, and materialmen shall be solely responsible for obtaining or delivering any and all exemption or other certificates and for furnishing a Contractor Exempt Purchase Certificate or other appropriate certificates to all persons, firms or corporations from whom the Contractor purchases supplies, materials and equipment for the performance of the Work covered by this Contract.

...

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

...

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

...

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit. The Owner shall secure any necessary building permit. The Contractor shall secure and pay for all other permits and governmental fees, licenses, and inspections necessary for proper execution of and completion of the Contract that are legally required when bids are received. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also procure all certificates of inspection, use, other permits and licenses, pay all charges and fees

and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection and use shall be delivered to the Owner upon completion of the Work in sufficient time for occupancy of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum.

...

as well as for other permits, fees, licenses, and inspections by government agencies necessary for § 3.7.1.1 The Contractor shall, as soon as practicable, furnish the Owner and Engineer with copies or certificates of all permits, fees, licenses, and inspections necessary for the proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Work, including, without limitation, all applicable building permits other than those required of the Owner under Sections 2.2.1 and 3.7.1. All inspection fees and other costs of such permits and licenses required to be obtained by the Contractor as may be imposed by any municipal or other entity shall be paid by the Contractor and shall not serve as the basis for any increase in the Contract Sum.

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§ 3.7.3 If the Contractor performs Work knowing it to be contrary to that it knows or should know (in the exercise of good construction practice) is contrary applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. all costs attributable to the correction thereof or related thereto, including reimbursement to the Owner for any additional services required of the Engineer and fines and penalties, if any.

...

§ 3.7.4 Any nonconformity discovered by or made known to the Contractor, or which the Contractor reasonably should recognize before performing the affected portion of the Work, shall be reported promptly in writing to the Engineer. Any resulting necessary changes shall be accomplished by appropriate Modification. Failure by the Contractor under this section to promptly report any nonconformity with applicable laws, statutes, ordinances, building codes, and rules and regulations shall constitute a waiver by the Contractor of any claim that otherwise might result in a change in the Contract Sum or Contract Time.

...

§ 3.7.5 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, ~~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 written notice to the Owner and the ~~Architect-Engineer~~ before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The ~~Architect-Engineer~~ will promptly investigate such conditions and, if the ~~Architect-Engineer~~ determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the ~~Architect-Engineer~~ 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-Engineer~~ shall promptly notify the Owner and Contractor in writing, stating the reasons. If ~~either party disputes the Architect's determination or recommendation, that party~~ the Contractor disputes the Engineer's determination or recommendation, it may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum will be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, and reviews, or (2) inspections, tests, and reviews the Contractor had the opportunity to make or should have performed in connection with the Project.

...

§ 3.7.5-3.7.6 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 and ~~Architect~~ Engineer. 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.

...

§ 3.8.2 ~~Unless otherwise provided in the Contract Documents,~~ Documents:

...

- .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;~~ The value of allowances shall also include: all plant, equipment and labor for handling and storage at the site; any costs for protection; all costs for associated demolition work; costs for removal and off site disposal of demolished materials; costs for labor, materials and equipment for installation and finishing, except where labor is specified not to be a part of the allowance; and other expenses required to complete the installation; and

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- .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, 3.8.2.2,~~ and

...

- .4** Contractor's overhead and profit, including costs for bonds and insurance, for these allowances shall be included in the costs or values of the General Requirements of the Contract Sum and not in the allowance.

...

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. ~~The Contractor's superintendent or responsible temporary substitute shall attend all job meetings.~~

...

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect and Engineer~~ the name and qualifications of a proposed superintendent. The ~~Architect Engineer~~ or Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the ~~Architect-Engineer~~ has reasonable objection to the proposed superintendent or (2) that ~~the Architect requires any of~~

them require additional time to review. Failure of the ~~Architect-Engineer~~ or Owner to reply 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 or ~~Architect-Engineer~~ 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~~-delayed.

...

§ 3.9.3.1 Any proposed superintendent shall have qualifications that meet or exceed, at a minimum, the following qualifications before being considered by the Owner and Engineer: (a) five (5) years of experience as a superintendent in the particular construction discipline required by the Contract; (b) superintendent on at least two (2) construction projects equal to, or greater than, the Contract Sum for this Contract; and (c) superintendent on at least two (2) projects of similar construction types and procedures as this Project.

...

§ 3.9.4 The superintendent shall be on a full time basis in a managerial capacity to continuously expedite, direct, supervise and coordinate the Work and shall not normally engage in performing physical labor.

...

§ 3.9.5 The Contractor's superintendent shall have authority to make decisions pertaining to the Contractor's Work.

...

§ 3.9.6 Contractors that are awarded more than one trade contract shall provide a superintendent for each contract.

...

§ 3.9.7 The cost of the full time Contractor superintendent shall be included in the base bid for the duration of the Project from the notice to proceed until actual final completion and final payment.

...

§ 3.10.1 The Contractor, ~~promptly~~-promptly, but in no event later than 15 working days, after being awarded the Contract, shall prepare and submit for the Owner's and ~~Architect's information~~-Engineer's information and 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 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.

...

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

...

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

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§ 3.10.2 The Contractor shall cooperate with the Owner and Engineer in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the construction or operations of the Owner's own forces.

...

§ 3.10.3 The Contractor shall conform to the most recent schedules.

...

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed to the level of completion required of the Contract Documents or 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. The Contractor shall not be entitled to an adjustment in Contract Sum or Contract Time in connection with extraordinary measures required by the Owner.

...

§ 3.10.5 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's Engineer's approval. The Engineer's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect-Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The submittal schedule is required to be updated and submitted bi-weekly.

...

§ 3.10.3-3.10.6 The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Owner or Engineer to conform to the Project schedule.

...

§ 3.10.7 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect-Engineer and incorporated into the approved Project schedule.

...

§ 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved-appropriate final Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and shall be delivered to the Architect-Engineer and delivered by the Contractor to the Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall also provide conformed construction drawings (As-Built) per Section 01700 of the Specifications.

...

§ 3.11.2 The Contractor shall make all approved permit drawings accessible to governmental inspectors and other authorized agencies.

...

§ 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. The Shop Drawings shall include fabrication, erection, layout, and setting drawings and schedules, wiring and piping diagrams; and any other information required for proper approval of or installation of all parts of the Work specified. If any modifications are required to a standard item, such modifications shall be clearly shown or noted at the time of submission of Shop Drawings.

...

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

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§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which 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-Engineer~~ is subject to the limitations of ~~Section 4.2.7. set forth in~~ Section 4.2. Informational submittals upon which the ~~Architect is and Engineer 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 ~~Architect or Engineer~~ without action.

...

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the ~~Architect-Engineer~~ Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Architect or, Engineer, 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 the Owner or of separate contractors, other Contractors or the Owner's own forces. The Contractor shall cooperate in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Contractors. All submissions shall be in accordance with Section 01300 Submissions.

...

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and ~~Architect-Engineer~~ 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. Contractor shall be responsible for verification of field dimensions and conditions and shall furnish such information to the Engineer when requested. Before Contractor proceeds with the Work in question, the Contractor should field verify all dimensions. In case of doubt about deminsions, Contractor should notify the Engineer immediately for instructions.

...

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been ~~approved by the Architect~~reviewed by the Engineer.

...

§ 3.12.8 The Work shall be in accordance with ~~approved-reviewed~~ submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the ~~Architect's approval~~Engineer's review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the ~~Architect-Engineer~~ in writing of such deviation at the time of submittal and (1) the ~~Architect has given written approval to~~Engineer has taken appropriate action and has submitted written notification thereof for 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 Engineer's review thereof.

...

§ 3.12.8.1 Equivalent Products: Whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturer's or vendor's names, trade names, catalog numbers, or the like, it is so identified for the purpose of establishing a standard. If Bidder or Contractor wishes to use any material, article, or piece of equipment by another manufacturer or vendor, which the Contractor believes will perform adequately to satisfy the general design and will provide equal or better substance, appearance and performance, such product will be reviewed by the Engineer when a written request is submitted in accordance with the Specifications. Any proposed product to be substituted shall not be purchased or installed by the Contractor without the Engineer's review process having been completed and the product accepted by written notification.

...

§ 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 ~~Architect-Engineer~~ on previous submittals. In the absence of such written notice, the ~~Architect's approval~~Engineer's review of a resubmission shall not apply to such revisions.

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§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. 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-Engineer~~ will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such ~~professional~~professional, and who will comply with reasonable requirements of the Owner regarding qualifications and insurance. 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-Engineer. The

Owner and the ~~Architect-Engineer~~ shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and ~~Architect-Engineer~~ have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the ~~Architect-Engineer~~ will review, 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 for the purpose of determining whether or not the Work, as proposed in the submittals, will be in compliance with the requirements of the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

...

§ 3.12.11 Samples shall be properly labeled, giving the following information as applicable: (a) Project name and location; (b) Name, finish, and composition of material; (c) Location where material is to be used; (d) When approved, samples shall be so indicated; and (e) Labels shall be large enough for approval stamp.

...

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

...

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

...

§ 3.13.3 The Contractor shall perform and shall ensure that all Subcontractors and suppliers perform all Work in a manner that permits reasonable access to the Project site and to all adjacent premises. The Contractor shall not, and shall not permit any Subcontractor or supplier to, conduct the Work in a manner that disturbs or that could be reasonably anticipated to disturb operations and persons located in or on portions of the site not affected by the Work.

...

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

...

- .1 Smoking is prohibited anywhere on Owner property. Violators will be subject to arrest and/or fine as set forth under applicable law. No alcoholic beverages or controlled substances are permitted

on Owner property, and persons under the influence of alcoholic beverages or controlled substances may not enter in or remain on Owner property.

...

.2 No firearms are permitted on Owner property, and no firearms shall be brought on Owner property without the Owner's express prior consent.

...

.3 Appropriate protective gear (hard hats, safety shoes, goggles, etc.) are to be worn as required by OSHA standards, the New York State Department of Labor, and prudent practice. Shirts are to be worn at all times. No short pants are permitted.

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.4 Any person who uses inappropriate language, or who is disruptive to the library environment, will be banned from the site.

...

.5 Contractor personnel shall not converse with library employees or patrons, except as expressly permitted by Owner.

...

.6 All persons on the Project site will comply with all reasonable instructions regarding conduct and safety which are given by the Engineer or library administrators.

...

.7 Intentionally Omitted.

...

.8 Intentionally OMitted.

...

.9 Intentionally Omitted.

...

.10 To gain access to the Work, entrances and parking areas will be designated by the Owner for the Contractor's use. Any vehicles or trucks in non-designated areas may be towed at the Contractor's expense.

...

.11 Intentionally Omitted.

...

.12 Intentionally Omitted.

...

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

...

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

...

.15 Asbestos manifests showing the locations of all known asbestos bearing materials are available in each building, and should be consulted prior to the commencement of any work, including but not limited to demolition.

...

.16 Demolition is to occur only when the building is unoccupied. Dust partitions and negative air are to be installed prior to commencing demolition. The Contractor must obtain Engineer approval on dust partitions and negative air prior to commencing demolition work. Debris shall be removed by using an enclosed chute or similar sealed system.

...

.17 (a) Prior to the commencement of work, the Contractor must submit construction plans, which show the location of dust particles, exhaust & fresh air fans and describe in detail the operation procedures during demolition and construction which may generate dust.

...

(b) All entrances to rooms in the building shall be sealed with at least 6 mil. polyethylene sheeting to prevent dust created by demolition and construction work from entering the classrooms. Entrances and egress to the work zone shall be covered with a triple flap 6 mil. polyethylene doorway to allow access to the area without the release of dust. Contractors are additionally responsible for all debris and dust infiltrating adjacent and undisturbed areas of the building.

...

(c) Shut down and lock out all electrical and HVAC in the work area. Cut, cap, and seal all duct work where it enters the work area from another space. All duct work and conduit within the space shall be removed during demolition work.

...

(d) The Contractor shall install dust protection barriers and poly sheeting. There shall be no or minimum damage to adjacent surfaces. The Contractor is responsible to repair any damage to existing surfaces.

...

.18 Painting or other chemical applications shall be done in the existing building only when it is unoccupied. Storage of chemicals and painting shall be outside the existing or new structures, and shall follow manufacturer's storage guidelines.

...

.19 Oxygen or other gas containers shall be properly stored and secured per OSHA requirements, to the satisfaction of the Owner and Engineer. Failure to do so will result in a \$250 backcharge, per occurrence.

...

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

...

.21 Each Contractor must send a qualified representative, knowledgeable in the Project and authorized to make decisions on behalf of the Contractor, to every Project meeting.

...

.22 The Contractor shall cooperate with the library administrators and custodial staff, however, if any additional work is requested the Contractor shall not proceed unless written approval is received from the Owner or Engineer. The contractor will not be compensated for any additional work performed without the Owner's or Engineer's prior written approval.

...

.23 Deliveries sent to the library will not be signed for or unloaded by the Owner. They will be directed to the Contractor and, if no employee is on site, the delivery will be rejected, at the Contractor's expense.

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.24 The General Trades Contractor shall be responsible for managing dust and dirt. On the exterior, site shall be watered down frequently to prevent dust clouds from rising. Streets shall be maintained clean per the Owner's or Engineer's request.

...

.25 Intentionally Omitted.

...

.26 Each Contractor shall submit a weekly work schedule indicating work days, work hours and manpower allocation.

...

.27 No storage of materials will be permitted within the buildings at any time during construction. Contractors must provide exterior storage containers when required. Final location of storage containers shall be determined by the Owner and/or Engineer.

...

.28 The General Trades Contractor shall be responsible for maintaining all appropriate site safety signage.

...

.29 Contractors shall be responsible for protecting Owners property. All existing shrubs, trees, lawn fixtures, sculptures and miscellaneous equipment shall be protected at all times. Any removals or relocation of said objects, if allowed shall be as directed by Owner and/or Engineer.

...

.30 The General Trades Contractor shall provide and service now fewer than four (4) portable lavatories for the duration of construction. Lavatories shall be serviced by the General Trades Contractor on a regular basis to maintain sanitary conditions.

...

.31 The General Trades Contractor shall protect all existing roofs during construction and shall be responsible for any damage to roofs during construction. The General Trades Contractor shall make all repairs to any damaged areas, as required by the manufacturer of the roof system.

...

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

...

.33 All Contractors shall be responsible for conducting pre-construction walk-throughs and video taping existing conditions. Mandatory walk-throughs shall be pre-scheduled through the Engineer, and shall have the Owner, the Engineer, and the Contractor present. Failure to do so will result in Owner arranging for these services and backcharging Contractor for all related costs.

...

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

...

.35 No weapons are permitted on the Owner's property.

...

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

...

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

...

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

...

.39 The Contractor will ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work will be performed in such a manner that public areas adjacent to the site of the Work will be free from

all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor will use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work; or (2) the building in the event of partial occupancy, as more specifically described in Section 9.9.

...

.40 All Contractors are required to protect their own Work and work areas, preconstruction, during construction and post construction.

...

.41 Without limitation of any other provision of the Contract Documents, the Contractor will comply with all reasonable rules and regulations promulgated by the Owner or Engineer in connection with the use and occupancy of the Project site and the Buildings, as amended from time to time by the Owner or the Engineer

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§ 3.13.5 Use of Buildings. Each Contractor shall cooperate with the Owner in making available for the Owner's use portions of the completed or partially completed buildings as provided for in Section 9.9. Such use shall not constitute acceptance thereof. Such occupancy shall in no way abrogate any specified warranties or guaranties for materials, workmanship or operation of equipment pertaining to the occupied portions. Each Contractor shall cooperate with the Owner in making available for the Owner's use such building services as heating, ventilating, cooling, water, lighting and telephone for the space or spaces to be occupied, and if the equipment required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid space or spaces, the Contractor shall make every reasonable effort to complete such part of its Work as soon as possible to the extent that the necessary equipment can be put into operation and use. Mutually acceptable arrangements shall be made as to the warranties or guaranties affecting all Work associated therewith. Such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Such occupancy shall be documented with an appropriately executed Certificate of Substantial Completion.

...

§ 3.13.6 The Contractor shall assure free, convenient, unencumbered and direct access to properties neighboring the Project site for the owners of such properties and their respective tenants, agents, invitees and guests.

...

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

...

§ 3.13.8 No signs or advertising material will be permitted on the Project site.

...

§ 3.14.3 The word "new" used herein shall mean Work which has been or is to be installed under the terms of the Contract for this Project. The word "existing" used herein shall mean existing conditions previous to the award of a Contract for this Project. In order to eliminate cutting and patching as much as possible, each Contractor shall, during the progress of the Work, provide and set proper sleeves, inserts, and other fixtures as required for its new Work and shall give proper and detailed instructions to others where Work may be affected by their Work, with adequate notice prior to the erection of new Work. Cutting and patching Work as required to install new Work or remove existing Work shall be done carefully and neatly with as little damage as possible. Each Contractor should refer to the Specifications for proper cutting and patching requirements. Any costs caused by defective or ill-timed Work shall be borne by the Contractor responsible therefor. Any Contractor which is required to cut and patch its new Work to provide conditions for other Contractors to complete their new Work and which was not given adequate prior notice of the conditions required for the completion of such Work before doing its Work shall charge the Contractor in default the documented cost of the cutting and patching Work plus fifteen percent (15%) for overhead and profit unless otherwise specified. Cutting and patching of any Work shall be made in such a manner as to not breach any provisions of any guaranty or warranty on existing Work left in place or any guaranty or warranty required for the Contractor's new Work. Patching of Work shall match existing adjacent surfaces and patchwork shall be disguised completely to hide any trace of patching. All new Work on existing roofs must be provided by a company specializing in performing the Work and approved by the existing roofing material manufacturer. It shall be the responsibility of the Contractor performing the cutting and patching to maintain any existing roofing warranty.

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§ 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. The Contractor shall completely clean the site of the Work, removing and disposing of all construction-related debris and rubbish, and cleaning all Work-related stains, spots, marks, dirt, mortar smears, plaster smears, paint smears, caulking smears, and other foreign materials from exposed surfaces inside and outside the buildings and within the Project limit lines.

...

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner ~~may~~ may, upon five (5) days written notice, do so and Owner shall be entitled to reimbursement from the Contractor.

...

§ 3.16.1 The Contractor shall provide the Owner and ~~Architect-Engineer~~ access to the Work in preparation and progress wherever located. Federal, state, and local agencies with jurisdiction over the Project shall at all times have access to the Work wherever it is in preparation or progress. The Contractor shall provide for such access so that such agencies may perform their functions.

...

§ 3.16.2 The Contactor shall allow access for all required tests and inspections.

...

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 and ~~Architect-Engineer~~ harmless from loss on account thereof, but shall not be responsible for such 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 or ~~Architect-Engineer~~. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the ~~Architect-Engineer~~ and the Owner.

...

§ 3.18.1 To the fullest extent permitted by law ~~the Contractor shall law~~, the Contractor shall defend, indemnify and hold harmless the Owner, ~~Architect, Architect's Engineer, and Engineer's~~ consultants, and agents and employees of any of them (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, 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 itself, but including loss of use) caused in whole or in part 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, 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's indemnity obligations under this section 3.18.1 shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Indemnitees under any applicable statute, rule, or regulation including but not limited to any New York Statute, Occupational Safety and Hazardous Act, and the Federal Occupational Safety and Hazardous Act. In claims against any person or entity indemnified under this section 3.18.1 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 this 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' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

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§ 3.18.2-3.18.1.1 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, the Subcontractor shall defend, indemnify, and hold harmless the Owner, Engineer, and their consultants, agents, and employees of any of them (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, 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 including loss of use), caused in whole or part by the negligent acts or omissions of the Subcontractor, its Sub-Subcontractor(s), 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 herein. The Subcontractor's indemnity obligations under this section shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Indemnitees under any applicable statute, rule, or regulation including but not limited to any New York Statute, Occupational Safety and Hazardous Act, and the Federal Occupational Safety and Hazardous Act. In claims against any Indemnitee by an employee of the Subcontractor, one of its Sub-Subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the foregoing indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Subcontractor or its Sub-Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts."

...

§ 3.18.1.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section ~~3.18.1~~ 3.18 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.

...

§ 3.18.1.3 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Indemnitees from and against any and all claims, damages, losses, suits, obligations, fines, penalties, costs, charges, and expenses, including but not limited to attorneys' fees, which may be imposed upon or incurred by or asserted against any of them by reason of any act or omission of such Contractor, or any of its Subcontractors, or any person or firm directly or indirectly employed by such Contractor, for the act(s) and/or omission(s) of any Contractor or Subcontractor in connection with the work of the Project.

...

§ 3.18.2 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.

...

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

...

§ 3.18.4 Intellectual Property. The Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against any claim or demand for patent fees, royalties, or otherwise on account of any invention, machine, article, process, copyright, or arrangement that may be used by the Contractor in performing the Work, other than as to any of the foregoing expressly called for in the Contract Documents to be so used. In the event of any injunction or legal action regarding such claim or demand that results in stopping the Work in whole or part, the Owner shall have the right to direct the Contractor to change the manner of performance of the Work to avoid such stoppage, all cost and expense occasioned thereby to be borne solely by the Contractor.

...

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

...

§ 3.18.6 Subject to Section 3.18.7, all obligations of the Contractor under this Section 3.18 to defend the Indemnitees are obligations to provide full defenses at the sole cost and expense of the Contractor, regardless of any alleged

culpability on the part of any Indemnitee or any ultimate determination of relative shares of liability of any Indemnitee or limitation of the Contractor's indemnity obligations in light of such determination.

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

...

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

...

§ 3.19 Existing Features and Underground Data

...

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

...

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

...

§ 3.20 Construction Stresses

...

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

...

§ 3.20.2 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 this Agreement.

...

§ 3.21 Training and Instructions

...

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

...

ARTICLE 4 ARCHITECTENGINEER

...

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

...

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

...

§ 4.1.3 If the employment of the ~~Architect~~Engineer is terminated, the Owner shall employ a successor ~~architect~~Engineer as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the ~~Architect~~Engineer.

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§ 4.2.1 The ~~Architect~~Engineer will provide administration of the ~~Contract Agreement~~ as described in the Contract Documents and will be an Owner's representative during construction until the date the ~~Architect~~Engineer issues the final Certificate for Payment. ~~The Architect For Payment. The Engineer~~ will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

...

§ 4.2.2 The ~~Architect~~Engineer 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~~Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~Engineer 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, except as provided in Section 3.3.1.

...

§ 4.2.3 On the basis of the site visits, the ~~Architect-Engineer~~ will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The ~~Architect-Engineer~~ will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect-Engineer~~ will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION~~The Contractor shall participate with other Contractors and the the Engineer and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall constitute the schedules to be used by the Contractor, other Contractors, the Engineer, and the Owner until subsequently revised.~~

...

§ 4.2.4.1 Upon issuance of the Project construction schedule, each Contractor will assume full responsibility for the execution of their Work in the allotted duration times.

...

~~Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract.~~ **§ 4.2.5** The Owner and Engineer will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Owner nor the Engineer will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

...

§ 4.2.6 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION~~Communications by and with the Architect's Engineer's consultants shall be through the Architect-Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.~~

...

~~**§ 4.2.5** Based on the Architect's~~ **4.2.6.1** Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Architect-Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

...

~~§ 4.2.6 The Architect has~~ **4.2.6.2** The Engineer and the Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect-Engineer or the Owner considers it necessary or advisable, the Architect-Engineer or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect-Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect-Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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§ 4.2.7 The Architect-Engineer 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 Engineer's action will be taken in accordance with the submittal schedule approved by the Architect-Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's its obligations under Article 3. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect-Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect's Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

...

§ 4.2.7.1 The Engineer's review of Contractor's submittals shall be limited to an initial submittal and one (1) resubmittals. If the Engineer is required to review additional submittals because the initial submittal and one (1) resubmittals failed to conform to the information given and the design concept expressed in the Contract Documents, the amount of compensation paid to the Engineer by the Owner for additional services shall be deducted from the payments to the Contractor.

...

§ 4.2.7.2 The review will not be considered complete until an "ACTION" stamp or other written notice to that effect has been received by the Contractor.

...

§ 4.2.8 The Architect-Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect Article 7. The Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. Article 3.

...

§ 4.2.9 The Architect-Engineer and the Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents

required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

...

§ 4.2.10 If the Owner and ~~Architect agree, the Architect-Engineer agree, the Engineer~~ will provide one or more project representatives to assist in carrying out the ~~Architect's-Engineer's~~ responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

...

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

...

§ 4.2.12 Interpretations and decisions of the ~~Architect-Engineer~~ 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-Engineer~~ 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 rendered in good faith.

...

§ 4.2.13 The ~~Architect's-Engineer's~~ decisions on matters relating to aesthetic ~~effect-effect~~, after consultation with the Owner, will be final if consistent with the intent expressed in the Contract Documents.

...

§ 4.2.14 The ~~Architect-Engineer~~ will review and respond to requests for information about the Contract Documents. The ~~Architect's-Engineer's~~ response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the ~~Architect-Engineer~~ will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 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~~" "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~~" "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

...

§ 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~~" "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.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the ~~Contract, Agreement~~, shall furnish in writing to the Owner through the ~~Architect-Engineer~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect-Engineer~~ may reply within 14 days to

the Contractor in writing stating (1) whether the Owner or the ~~Architect-Engineer~~ has reasonable objection to any such proposed person or entity or (2) that the ~~Architect-Engineer~~ requires additional time for review. Failure of the Owner or ~~Architect-Engineer~~ to reply within the ~~14-day~~ 14 day period shall constitute notice of no reasonable objection.

...

§ 5.2.1.1 Subcontractors will not be acceptable unless, when requested by the Engineer or Owner, evidence is furnished that the proposed Subcontractor has satisfactorily completed similar subcontracts as contemplated under this Contract and has necessary experience, personnel, equipment, plant, and financial ability to complete the subcontract in accordance with the intent of the Contract Documents.

...

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

...

§ 5.2.1.3 Refer to Instructions to Bidders, Section 4, for requirements for delivery of “Contractor’s Subcontractor List” to Engineer’s office after receipt of bids before award of the Contract.

...

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or ~~Architect-Engineer~~ 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 or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner 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. Approval of a subcontractor may be revoked or withdrawn, if, in the opinion of the Engineer, such subcontractor evidences an unwillingness or inability to perform its Work in strict accordance with the Contract Documents.

...

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or ~~Architect-Engineer~~ makes reasonable objection to such substitution.

...

§ 5.2.5 The Contractor shall provide the Owner with a complete copy of each Subcontract for Subcontractors and material suppliers in excess of \$5,000.00.

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By appropriate ~~agreement, written where legally required for validity, 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, which the Contractor, by these Documents, assumes toward the Owner and ~~Architect-Engineer~~. Each subcontract agreement shall preserve and protect the rights of the Owner and ~~Architect-Engineer~~ under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontract shall contain provision for execution of lien waivers in form and substance acceptable to the Owner as a condition of payment by the Contractor. The Contractor shall require each Subcontractor to (1) inspect the Project site, including all relevant surfaces and job conditions, before beginning the Work and (2) accept or cite necessary corrections in the Project site, including surfaces or job conditions, before beginning the Work.

...

§ 5.3.1 The form of subcontract used by the Contractor shall be subject to the review and approval of the Owner. Without limiting the generality of the foregoing, the Contractor shall include the following provisions in each of its subcontracts:

...

.1 an agreement by the Contractor and Subcontractor that the Owner is an express third party beneficiary of the subcontract, entitled to enforce any rights thereunder for its benefit; and

...

.2 a provision that the Subcontractor shall assume toward the Contractor all of the obligations that the Contractor assumes toward the Owner under the Contract Documents; and

...

.3 an agreement by the Subcontractor to obtain and carry the insurance required under the Contract Documents (including, without limitation, the waiver of subrogation).

...

.1 assignment is effective only after termination of the ~~Contract Agreement~~ by the Owner for cause pursuant to Section 14.2 or stoppage of the Work by the Owner pursuant to Section 2.3 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

...

§ 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. [Intentionally Omitted].

...

§ 5.5 Owner's Right to Contact Subcontractors. The Owner may, at its discretion, furnish to any Subcontractor information regarding the Contractor's Application for Payment and the amounts actually paid by the Owner to the Contractor on account of the Work done by the Subcontractor.

...

§ 5.6 Payments to Subcontractors; Release of Liens and Claims. The Contractor shall pay each Subcontractor in accordance with subparagraph 9.6.2. The Contractor shall require each Subcontractor to submit with each application for payment a Release of Liens and Claims in a form approved by the Owner. The Owner shall have no obligation to pay, or to see the payment of any monies to any Subcontractor.

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§ 5.7 No Relationship with Subcontractors. Nothing contained in this Agreement shall be deemed to create any contractual relationship between the Owner and any Subcontractor or to create rights in any Subcontractor against the Owner. The Contractor shall promptly advise the Owner of any claim or demand by a Subcontractor claiming that any amount is due to such Subcontractor or claiming any default by the Contractor in any of its obligations to such Subcontractor.

...

§ 5.8 Discharge of Construction Liens. If any of Contractor's Subcontractors or sub-subcontractors file a construction lien against the Property, the Contractor shall within five (5) days of receipt of notice from the Owner, cause any such liens to be released by procuring and recording a bond or otherwise arrange for the removal of the lien. If the Contractor does not cause the lien to be released and discharged or removed, the Owner shall have the right to pay all sums necessary to obtain such a release and discharge, and to cause the costs it incurs in doing so (including reasonable attorneys' fees) to be paid by the Contractor. The Contractor shall indemnify, defend, and hold harmless the Owner from all claims, losses, demands, and causes of action or suits of whatever nature, including with respect to attorneys' fees incurred by the Owner, arising out of any such lien. Contractor's obligation to indemnify in this paragraph shall be in addition to Contractor's obligations to indemnify set forth elsewhere in this Agreement.

...

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the ~~Contract Agreement~~ identical or substantially similar to these including those portions related to insurance and waiver of subrogation.~~If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.~~

...

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "~~Contractor~~" "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

...

§ 6.1.2.1 The Contractor shall provide for coordination of its activities with the activities of each Prime Contractor. This includes, but is not limited to, the Owner's own forces of separate Contractors employed directly by the Owner.

...

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, Agreement, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

...

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect-Engineer and the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

...

§ 6.2.2.1 Each Contractor shall promptly correct discrepancies or defects in their Work identified by other Contractors as affecting proper execution and results of the Work of the other Contractor.

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§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5. The Contractor shall also promptly correct discrepancies or defects in its Work identified by the Owner or separate contractors as affecting proper execution and results of the Work of the other separate Contractors.

...

§ 6.2.5.1 Claims and other disputes and matters in question between the Contractor and other separate Contractors shall be subject to the provisions of Article 15.

...

§ 6.2.6 Should the Contractor or its Subcontractors cause damage to the Work or property of any separate Contractor or other Contractor, the Contractor shall, upon due notice, promptly attempt to settle by agreement or otherwise resolve the dispute with the separate Contractor or other Contractor. If such separate Contractor or other Contractor sues or makes any other claim against the Owner or Engineer on account of any damage alleged to have been caused by the Contractor or its Subcontractors, the Owner or Engineer shall notify the Contractor, and the Contractor shall defend, indemnify, and hold harmless the Owner and Engineer against such claim or proceedings at the Contractor's own expense in accordance with Section 3.18.

...

§ 6.2.7 All required cutting, patching, and restoring shall be neatly done by mechanics skilled in their specific trades, to the satisfaction of the Engineer.

...

§ 6.2.8 The Contractor shall leave all Work of his trade WHOLE, PERFECT, AND COMPLETE at the final completion of the Work..

...

§ 6.2.9 The Contractor shall provide for coordination of its activities with the activities of each separate Contractor. This includes, but is not limited to, the Owner's own forces of separate contractors employed directly by the Owner.

...

If a dispute arises among the Contractor, separate 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 ~~Architect-Engineer~~ will allocate the cost among those responsible.

...

§ 7.1.1 Changes in the Work may be accomplished after execution of the ~~Contract, Agreement,~~ and without invalidating the ~~Contract, Agreement,~~ 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, Contractor and ~~Architect-Engineer~~ and shall be memorialized in a format approved by the Owner; a Construction Change Directive requires agreement by the Owner and ~~Architect-Engineer~~ 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-Engineer~~ alone.

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§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Additional work performed without authorization of a Change Order will not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time. No course of conduct or prior dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment of the Owner, shall be the basis for any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

...

§ 7.1.4 Costs for changes in the Work shall not be allowed in excess of usual rentals charged in the area where the Project is located for similar equipment of like size and condition, including costs of necessary supplies and repairs for operating equipment on site in connection with other work unless its use incurs actual and additional costs to Contractor. If equipment not on Site is required for change in work only, cost of transporting equipment to and from Site will be allowed.

...

§ 7.1.5 Lump Sum quotations shall be properly itemized and supported by sufficient substantiating data, including but not limited to material descriptions, material quantities, material unit prices, labor trade listings, labor hour quantities, labor trade rates, equipment descriptions and equipment rates with a percentage allowance for overhead and profit as set forth in Section 7.3.11.

...

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

...

§ 7.2.1.4 Changes in the Work involving additional Work or deletion of Work effecting an addition to or subtraction from the Contract Sum shall not be made until the Contractor submits to the Engineer the cost of the added or deleted Work with a complete and detailed listing of all Subcontractors involved, all materials, labor, overhead and profit and an appropriate Change Order has been issued. If requested, the Contractor shall submit detailed quotations for Subcontractors and material suppliers. Changes in the Work when not involving additions or deletions from the Contract Sum shall not be made until the Engineer has issued an appropriate Change Order. ALL CHANGE ORDERS MUST HAVE THE APPROVAL OF THE OWNER AND ENGINEER IN WRITING.

...

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

...

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all 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.

...

§ 7.2.4 Additional work performed without authorization of a Change Order will not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time, except as provided in Section 7.3, and except in the case of an emergency as provided in Section 10.4.

...

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect-Engineer and signed by the Owner and Architect-Engineer, 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, Agreement, 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.

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- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; fee, subject to the limitations of Section 7.3.11; or

...

- .4 As provided in Section ~~7.3.7~~7.3.7, subject to the limitations of Section 7.3.11.

...

§ 7.3.4.1 Unit Prices: Unit prices shall be submitted in the Bid Form for various items set forth therein. Unit prices set forth shall be used to determine equitable adjustment of the Contract Sum in connection with extra Work or Work omitted or reduced by the Engineer. The unit prices quoted shall include all labor, materials, equipment, overhead, bonds, insurance, applicable taxes and profit and shall apply to all Work added. Work deducted shall be at unit prices quoted. If any one of the unit prices quoted by a Contractor is excessively high in the opinion of the Engineer, the Owner and Engineer will have the right to adjust such unit price to a fair and reasonable figure before signing of the Agreement.

...

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the ~~Architect~~Engineer 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 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect~~Engineer shall determine the method and 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, computed in accordance with Section 7.3.11. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect~~Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

...

- .1 ~~Costs~~Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and ~~workers'~~workers compensation insurance;

...

- .2 ~~Costs~~Actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

...

- .4 ~~Costs~~Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the ~~Work~~Work.

...

§ 7.3.7.5 Where quoted unit prices are not applicable and the extra cost is to be determined under Section 7.3.3.3, the allowance above actual cost for overhead and profit shall be as specified in Section 7.3.7.2.

...

- ~~.5 Additional costs of supervision and field office personnel directly attributable to the change.~~ §
7.3.7.6 Labor costs shall include items incidental to labor such as workmen's compensation insurance, social security, fringe benefits and all mandatory costs paid in connection with labor. Overhead shall include insurances other than those mentioned above, premiums on bonds required by the Contract, Contractor's supervisory employees, general office expense and small tools. Detailed estimate breakdown quotations shall be provided.

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§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect, without markup. 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 Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's 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. cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Engineer. 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

...

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect-Engineer 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 Architect-Engineer will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

...

§ 7.4 MINOR CHANGES IN THE WORK 7.3.11 The limit for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

...

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

...

- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, maximum of five percent (5%) of the amount due between Contractor and Subcontractor. For the Subcontractor, for Work performed by the Subcontractor's own forces, ten percent (10%) of the cost.

...

~~The Architect has authority.~~ .3 The markup on any part of the Work a Subcontractor subcontracts will be limited to one overhead and profit figure, in addition to the Contractor's overhead and profit markup. The Subcontractor and Sub-subcontractor may divide the overhead and profit amount as they agree upon.

...

.4 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7.

...

~~order minor changes in the Work.~~ .5 In order to facilitate checking of quotations for extras and credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and Subcontracts. Labor and material shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also.

...

~~not involving adjustment in.~~ .6 Overhead and profit shall include, but not be limited to, the following:

...

.1 home office expense;

...

.2 field office expense;

...

.3 supervision;

...

.4 project management & estimation; and

...

.5 small tools & equipment.

...

~~the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by § 7.3.12 When either the Owner or the Contractor or both do not agree with the determination made by the Engineer concerning the adjustments in the Contract Sum and Contract Time, such disagreement shall be resolved in the manner prescribed by Section 15.~~

...

§ 7.4

...

written order signed by the Architect and shall be binding on the Owner and Contractor. If the Contractor wishes to make a claim for a change in the Work, it shall give the Owner written notice thereof within seven (7) days of the event giving rise to the claim or the change in the Work. The notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed with the Work and may pursue a claim in accordance with the terms of this Agreement. Written approval of the Owner is an absolute condition precedent to any payment for any change in the Work and proceeding on oral orders is a waiver by the Contractor of any claim for compensation for any such changes in the Work done without such prior written approval.

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

...

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

...

§ 8.1.5 The date of final completion of the Work shall be the date on which the Contractor has finally completed satisfactorily all the Work required of the Contractor under and in accordance with the Contract Documents.

...

§ 8.1.6 Work remaining to be completed after Substantial Completion, shall be limited to items which can ordinarily be completed within thirty (30) day period (one month) before final payment is made.

...

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

...

§ 8.2.1.1 The Contractor recognizes that the Project Schedule is of critical importance to the Owner. All aspects of construction must reflect a "time is of the essence" construction strategy. The "Bid Schedules" serve as a guide of critical milestone dates to the Project. Failure to meet intermediate milestone dates will jeopardize the overall Project Schedule. If the Contractor's performance of the Work evidences, to the Owner or Engineer, that the completion day may be in jeopardy, this will mandate Contractor(s) to increase staff, work overtime, or use other means to recover time, at the costs of those Contractor(s) responsible for such delays. In addition, all costs due to delays in completion of the Work shall be borne by Contractor(s) responsible for delays..

...

§ 8.2.2 The Contractor shall ~~not knowingly, not,~~ except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be

changed by the effective date of such insurance. The Work can not start until required insurance and bonds are provided and the Contract has been executed.

...

§ 8.2.2.1 Contractor shall not commence Work at the Project site until two (2) certified copies of all insurance policies as indicated in Article 11, attesting that the required coverages are in force, have been accepted by the Owner and the Owner's insurance carrier.

...

§ 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 shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified and, further, to provide such protections as may be necessary. It is expressly understood and agreed by the Contractor that the time for the 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.

...

§ 8.2.3.1 If the Contractor is not maintaining the pace of the Work in accordance with the approved construction schedule or otherwise consistent with the Contract Time, and such delays are not excusable as set forth in Section 8.3, then the Owner may require the Contractor to undertake a time recovery plan (including more personnel, overtime and/or additional shifts) at the Contractor's sole expense, to reasonably assure Final Completion of the Work within the Contract Time.

...

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

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

...

§ 8.2.5 If the Contractor does not achieve Substantial Completion within the Contract Time required by the Agreement between the Owner and Contractor, the Contractor shall be responsible for the cost of reimbursement of the Owner for payments made to the Engineer for services rendered from the end of the Contract Time established in the Agreement until Substantial Completion is achieved. If the Owner is required to pay the Engineer in accordance with its agreement with the Engineer, the Owner will back-charge the Contractor.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; Owner's own forces, the Engineer, any of the other Contractors or an employee of any of them, or by changes ordered in the Work; or by labor disputes, fire, unusual Work, or by fire, extraordinary delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect-Contractor's control, or by other causes which the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if 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 a delay will occur, and (3) is of a duration of more than one (1) day. Nothing contained herein shall be construed to provide for payment of compensation of any kind to the Contractor for damages due to hindrance or delay from any cause in the progress of the Work. The Contractor shall not be entitled to compensation for consequential damages, lost profits, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work. The extension of time provided under this Section 8.3.1 shall be the Contractor's exclusive remedy.

...

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

...

§ 8.3.1.2 An extension, or extensions, of time may be granted subject to the provisions of this Section, but only after written application therefore by the Contractor.

...

§ 8.3.1.3 The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently; but if at all, only the actual period of delay as the Architect may determine determined by the Engineer.

...

§ 8.3.1.4 An application for extension of time must set forth in detail the nature of each alleged cause of delay, the dates upon which such cause of delay began and ended, the number of days attributable to each of such causes, and the probable effect such causes on the previously approved progress schedule.

...

§ 8.3.1.5 Failure to strictly comply with these requirements may, at the discretion of the Owner, be deemed sufficient cause to deny any requested extension of time.

...

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 of this Agreement. A copy of any Claim for extension of time shall be delivered to the Owner and the Engineer, and the Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay to the Owner.

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§ 8.3.3 This An extension of the Contract Time shall be the sole remedy of the Contractor for the delays noted in 8.3.1. In such cases, the Contractor shall not be entitled to compensation for consequential damages, lost profits, lost opportunity costs, impact damages or other similar remuneration. In no event shall the Contractor be entitled to monetary damages for delay under the Contract. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

...

§ 8.3.4 Delays which affect the scheduled completion of the Work and are attributable to interference between Contractors, Subcontractors, suppliers, utility companies or municipalities, shall be compensated solely by the granting of an extension of time to the Contractor by the Owner to complete the Work without charges to the Owner. The time necessary for review of shop drawings, delays incurred by seasonal limitations and other administrative processing by all parties involved should be anticipated by the Contractor and are not compensatory. The Contractor agrees that the Contract Sum includes and reflects the additional cost of doing work under this Contract caused by interference of other Contractors, etc. and the other non-compensatory delays described above.

...

Section 8.3 does § 8.3.5 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.

...

§ 8.3.6 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

...

not preclude recovery of § 8.3.7 To the extent the Contractor is required to work during overtime hours, weekend, holidays, or at other times which are not regularly scheduled, due to the fault of the Contractor, the Contractor shall be responsible for the costs incurred by the Owner or Engineer attributable to working during periods which have not been ordinarily scheduled. To the extent the Contractor elects to work during these periods to facilitate the schedule, the Owner may, at its sole option, allow the Contractor to do so without the Contractor incurring the additional costs referenced above.

...

§ 8.3.8 This project is to be physically completed within the Contract Time. Liquidated damages will be assessed in the amounts specified below for each and every calendar day after such time allowed for Substantial Completion.

...

Total dollar amount of the contract is: _____ Assessed amount of liquidated damages per day:

...

Under \$50,000 _____ \$100 per day

...

\$50,001 - \$100,000 _____ \$250 per day

...

\$100,001 - \$500,000 _____ \$500 per day

...

\$500,001 - \$1,000,000 _____ \$750 per day

...

\$1,000,001 - \$5,000,000 _____ \$1,000 per day

...

Above \$5,000,001 _____ \$1,500 per day

...

delay by either party under Contractor realizes that time is of the essence on this Contract and the completion dates and, where applicable, milestone date for each work item in the Project Schedule, or the date of Substantial Completion shall be no later than the date indicated in these Documents. In the event the Contractor fails to complete any work or substantially complete the work under this Contract by said schedule date, the sum per calendar day for each date not met, as delineated above, will be subtracted from the payment due the Contractor (or, if the amount due the Contractor as payment is insufficient, any deficiency shall be paid by the Contractor to the Owner), except in cases where a delay is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including acts of God, or of the public enemy, acts of the Government, in either its sovereign or contractual capacity, fires, flood, epidemics, quarantine restrictions. Freight embargoes will not constitute a delay excusable under this provision unless approved by the Owner in writing.

...

Within five (5) calendar days from occurrence of any such delay, the Contractor shall notify the Owner in writing of

...

the cause of delay. The Owner will ascertain the facts and extent of the delay, and extend the time for completing the

...

Work when in its judgment the findings of fact justify such an extension. Owner's finding of fact will be final and

...

binding in litigation.

...

The said sum per calendar day shall constitute the Liquidated Damages incurred by the Owner for each day of delay

...

beyond the agreed upon Project Schedule dates for Substantial Completion. Such Liquidated Damages shall be in

...

other provisions addition to any other damages (other than by reason of delay) Owner may incur as a result of Contractor's breach of

...

Contract.

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In addition to Liquidated Damages, the Contractor shall be liable for all additional

...

costs incurred by the Owner to provide staff, Engineer's personnel as required to make facility accessible by

...

Contractor and perform inspections during such off hours. In the event that Substantial Completion date is not met,

...

inspections will be performed once each week unless the Owner or the Engineer determine, at their sole discretion,

...

that additional inspections are needed. All costs incurred by the Owner and the cost of additional inspections, at the

...

rate of One Thousand Dollars (\$1,000) per inspection, will be subtracted from the payment due the Contractor. If the

...

amount due the Contractor for payment is insufficient, any deficiency shall be paid by the Contractor to the Owner.

...

of the Contract Documents. To the extent the Contractor is required to work during overtime hours, weekend, holidays, or at other times which are not regularly scheduled, due to the fault of the Contractor, the Contractor shall be responsible for the costs incurred by the Owner and the Engineer attributable to working during periods which have not been ordinarily scheduled. To the extent the Contractor elects to work during these periods to facilitate the

schedule, the Owner may, at its sole option, allow the Contractor to do so without the Contractor incurring the additional costs referenced above.

...

§ 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 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor if and for so long as the Contractor fails to perform any of its obligations under any of the Contract Documents; provided, however, that any such holdbacks shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any default or failure of performance by the Contractor.

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, § 9.2.1 The Contractor shall submit to the Engineer a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require, described in Section 9.2.2 below. This schedule, unless objected to by the Architect, Engineer or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

§ 9.2.2 Each Contractor will be required to submit in triplicate to the Engineer within twenty-one (21) calendar days from the date of award of the Contract the schedule of values using the Engineer's Payment Application form. The list of items shall include all items included in all divisions and sections of the Specifications. The Contractor shall maintain and keep current all changes to the schedule of values caused by Change Orders, Construction Change Directives or other authorized changes. Such revised schedule of values shall be presented monthly with the Application for Payment. The following items shall also be listed separately as line items (with their respective values): (1) performance, payment bonds, and Project insurance; (2) field supervision and layout; (3) submittals and shop drawings; (4) temporary facilities; (5) operations and maintenance manual (including construction record drawings); (6) as-built drawings; (7) Project close-out; (8) cleaning-up; (9) each allowance associated with the Contract; (10) each Alternate accepted; and (11) each Change Order as it is issued.

...

§ 9.2.2.1 Each Contractor shall submit a separate Schedule of Values for each building or facility to which its Contract applies, showing the facility name and SED project number. To these schedules a summary sheet for the Contract value shall be attached.

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§ 9.3.1 At least ten-fifteen days before the date established for each progress payment, the Contractor shall submit to the Architect-Engineer 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. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, notarized and reflecting retainage as provided elsewhere in the Contract Documents. Applications for Payment will be in the form of AIA Document G702, accompanied by an appropriate AIA "Continuation Sheet," and must include (add and/or deduct) adjustments to the Contract Sum resulting from Work performed under approved

Change Orders (specified under Article 7) and shall be shown separately on the application for previous and current periods. Each Application and Certificate of Payment shall be accompanied by two (2) copies of the Pay Application Lien Waiver and Release. Each Application for Payment shall be prepared in such form and supported by such data to substantiate the Contractor's right to payments as the Owner and/or Engineer may require such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Subcontractor and material suppliers. Each Application for Payment forwarded to the Owner by the Engineer shall be subject to audit and approval by the Owner in accordance with the Owner's normal audit procedures. The Application for Payment must be accompanied by: (a) a current contractor's lien waiver; (b) duly executed waivers of public improvement liens from all subcontractors and material suppliers representing satisfaction of payment of all amounts requested by the Contractor on behalf of such entities in any previous application for payment; (c) certified payroll for all employees of the Contractor and employees of subcontractors performing Work on the Project; (d) for contracts of \$250,000 and more, all Contractors and subcontractors must attach a copy of proof of completion of the OSHA 10 course to the first Certified Payroll submitted and on each succeeding payroll where any new or additional employee is first listed; and (e) such other information which the Owner and/or the Engineer request the Contractor furnish in connection with its Application for Payment.

...

§ 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 ~~Architect, Engineer,~~ but not yet included in Change Orders.

...

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

...

§ 9.3.1.2 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 material ~~supplier, supplier~~ unless such Work has been performed by others whom the Contractor intends to ~~pay-pay~~.

...

§ 9.3.1.3 Until Substantial Completion in accordance with Section 9.8, the Owner shall pay ninety-five percent (95%) of the amount due the Contractor on account of progress payments, less an amount necessary to satisfy any claims, liens or judgments against Contractor, which have not been suitably discharged. In accordance with Section 9.8.5, the Owner shall pay the entire amount retained from previous progress payments less two (2) times the amount required to complete items identified in a list prepared in accordance with Section 9.8.2 and the amount required to satisfy any outstanding claims, liens, or judgments against the Contractor.

...

§ 9.3.1.4 In the event the bonds identified in Section 11.4 become invalid, the Owner shall pay 90 percent of the amount of each progress payment due the Contractor until Substantial Completion in accordance with Section 9.3.1.3 above. At the sole discretion of the Owner, the Owner may declare a default by the Contractor pursuant to the terms and provisions of this Contract in the event that the bonds identified in Section 11.4 become invalid.

...

§ 9.3.2 Unless otherwise provided in the Contract Documents, and in any event subject to written approval in advance by the Owner, payments shall be made on account of materials and equipment which are in short and/or critical supply and/or have been specifically fabricated for the Project and are 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 interest. The costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site shall not increase the Contract Sum.

...

§ 9.3.2.1 When payment for materials and equipment stored off site is approved by the Owner, copies of bills of lading and vendor invoices shall accompany the Contractor's request for payment. Procedures required by Owner shall include, but are not necessarily limited to, submission by the Contractor to the Engineer of bills of sale and bills of lading for such materials and equipment, provision of opportunity for Engineer's visual verification that such materials and equipment are in fact in storage, and, if stored off-site, submission by the Contractor of verification that such materials and equipment are stored in a bonded warehouse. Additionally, Contractor must furnish the following information, where payment is requested for materials and equipment stored off the Project site, as part of its Application for Payment: (a) type of material must be specifically identified by the trade contractor; (b) trade contractor must furnish an invoice from its supplier showing the total value of the material and/or equipment being stored off site; (c) trade contractor must provide a Certificate of Insurance for the full value of the item plus 10 percent.

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§ 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 become the property of the Owner, but the care and protection of such materials and equipment shall remain the responsibility of the Contractor until incorporation into the Work, including, without limitation, maintaining insurance coverage on replacement cost basis without voluntary deductible.

...

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

...

§ 9.3.3 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 shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor further warrants that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to any agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

...

§ 9.3.3.1 Notwithstanding such transfer of title, the Contractor shall have the full continuing responsibility to install materials and equipment, protect and maintain the Work, materials and equipment in proper condition and forthwith repair, replace and make good any damage thereto without cost to the Owner until such time as the Work covered by the Contract is fully accepted by the Owner. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract. In the event that after title has passed to the Owner, any such Work, supplies, materials and equipment are rejected as being defective or otherwise unsatisfactory, title to all such items shall be deemed to have been transferred back to the Contractor.

...

§ 9.3.4 The Contractor expressly undertakes to defend the Indemnitees (as defined previously in Section 3.18), at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor or any portion of the property of any of the Indemnities (referred to collectively as liens in this Section 9.3.4). The Contractor hereby agrees to defend, indemnify and hold Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

...

§ 9.3.5 The Owner shall release any payments withheld due to a lien or a claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond which is: (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than One Hundred Fifty percent (150%) of such lien claim. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3, including, without limitation, the duty to defend and indemnify the Indemnities. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

...

§ 9.4.1 The Architect-Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect-Engineer determines is properly due, or notify the Contractor and Owner in writing of the Architect-Engineer's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect-Engineer to the Owner, based on the Architect-Engineer's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect-Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations 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 Architect-Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect-Engineer 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

...

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

...

.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, regulations, and/or laws, including, without limitation, laws applicable to the provision of certified payrolls;

...

.9 failure of the Contractor to provide executed performance and payment bonds and a current certificate of insurance;

...

.10 reasonable evidence that the Work has not progressed as indicated on the Application for Payment; or

...

.11 breach of this

...

Agreement.

...

Notwithstanding the extent to which Engineer certifies an Application for Payment, the Owner shall have the right to withhold payment, in whole or in part, should the Owner determine that any of the grounds set forth in this Section 9.5.1 do in fact exist. If the Owner withholds payment, in whole or in part, the Owner shall promptly provide to the Contractor and Engineer a written explanation of the reason(s) for which payment is withheld and shall promptly pay, in accordance with the Contract Documents, all amounts which are not in dispute. The Owner shall not be deemed to be in breach of this Agreement for the withholding of any payments pursuant to this section or any other provisions of this Agreement, provided that such withholding is done in good faith.

...

§ 9.5.2 When the above reasons for withholding certification or the Owner's withholding of payment are removed, certification and payment will be made for amounts previously withheld.

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§ 9.5.3 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 Section 9.5.1. With respect to any Liens, claims, or other circumstances for which the Owner is entitled to withhold payments pursuant to decisions by the Engineer pursuant to Section 9.5.1, the Owner shall be entitled to withhold a sum equal to twice the stated amounts of such Liens or claims, or, where there is no stated amount, twice the amount determined by the Engineer to be necessary to protect the interests of the Owner. The Owner will release payments withheld due to Liens provided that the Contractor obtains a discharge of record of such lien, by bonding or otherwise. By posting a lien discharge bond, however, the Contractor shall not be relieved of any responsibilities or obligations under the Agreement, including, without limitation, the duty to defend, indemnify, and hold harmless the Indemnitees (as defined previously in Section 3.18). The cost of any premiums or other expenses incurred in connection with such bonds or other means of discharge of record shall be the sole responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

...

~~If the Architect~~ **§ 9.5.4** If the Engineer withholds certification for payment under Section 9.5.1.3, 9.5.1, or if the Owner otherwise deems it necessary to protect its interests or the interests of the Project, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment Engineer. Payments to the Contractor and Subcontractors by joint check shall constitute payment by the Owner under its agreement with the Contractor and such payment shall be reflected on the next Certificate for Payment. If the Contractor disputes any determination by the Engineer with regard to any Certificate for Payment, or in the event of a bona fide dispute between the Contractor and the Owner, the Contractor nevertheless shall expeditiously continue to prosecute the Work.

...

§ 9.6.1 ~~After the Architect has issued a Certificate for Payment, the~~ The Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. ~~Engineer.~~

...

§ 9.6.2 ~~The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held in trust by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contracts with the Contractor for which payment was made by the Owner. The Contractor shall strictly comply with any common law, statutory, or decisional law trust fund requirements in the State of New York (including without limitation the requirements of New York Lien Law Article 3-A), and hereby agrees that the Owner has the same rights as any beneficiary of such trusts to examine the books and records of the Contractor to determine such compliance, from time to time at the Owner's sole discretion. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.~~

...

§ 9.6.2.1 Within seven (7) days of receipt of a payment from the Owner, the Contractor shall pay each of its Subcontractors and suppliers for work performed and/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 with the Contractor, the Subcontractor is unable or unwilling to provide a performance bond and labor and material payment bond both in the full amount of the subcontract at the request of the Contractor. The Contractor shall not retain portions of the proceeds owed any Subcontractor and/or supplier from the Owner's payment to the Contractor for the "contract balance." Similar provisions apply to the Subcontractor and/or supplier paying each of its Subcontractors and suppliers. Nothing in this section shall create in the Owner any obligation to pay, or to ensure that the Contractor pays, any Subcontractor or supplier, or any relationship in contract or otherwise, implied or expressed, between any Subcontractor or supplier and the Owner. The Contractor agrees that it shall comply with the payment requirements of Section 106-b(2) of the New York General Municipal Law, as amended, and that to the extent there is any conflict between that statutory section and the provisions of this Section 9.6.2.1, the provisions of the statute shall prevail.

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§ 9.6.3 The Architect will, on request, Owner may, at its discretion, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect-Engineer and Owner on account of portions of the Work done by such Subcontractor. The Contractor shall promptly notify the Owner of any claim by a Subcontractor that any amount is due and owing from the Contractor to the Subcontractor.

...

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect-Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, material supplier, or Sub-subcontractor, nor is there created any relationship in contract or otherwise, implied or express, between the Subcontractor or the Subsubcontractor or material supplier and the Owner or Engineer. The Contractor shall take prompt action with respect to any lien filed or claim made by any of its suppliers, materialmen, Subcontractors or Sub-subcontractors, or others to whom it is obligated so that any such liens or claims will be removed of record as against the Owner or the Owner's property within twenty (20) days after they are filed or made. The Contractor shall be solely responsible for the removal and payment of all such liens and claims, and the Owner shall have no liability with respect to them. If the Contractor does not promptly remove any such lien or claim as required by this section, the Owner may do so, and may then deduct the cost of doing so, including reasonable attorneys' fees and disbursements, from the Contract Sum.

...

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.2 through 9.6.4.

...

§ 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 and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any

fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

...

If the ~~Architect-Engineer~~ does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after 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 ~~Architect-Engineer~~ or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and ~~Architect-Engineer~~, 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 shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.7.1 Notwithstanding anything to the contrary contained in the Agreement or these General Conditions, if the Owner withholds any payment from the Contractor in good faith with reasonable cause and based on the Contractor's failure to perform the Work in accordance with the Drawings and other Contract Documents that set forth the scope and specifications of the Work, or for any other reason permitted by the Agreement, then the Contractor shall nonetheless continue to prosecute the Work expeditiously; provided that the Owner notifies the Contractor in writing that it intends to withhold such payment and states the reasons therefor. If the Contractor stops its Work and it is determined that the Owner had the right to withhold payment under the terms of the Contract Documents, then the Contractor shall be responsible to the Owner for all costs and damages (including attorneys' fees) arising from such stoppage of Work and the Contractor shall not be entitled to any adjustment in the Contract Sum or the Contract Time.

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§ 9.7.2 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 an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof The Date of Substantial Completion of the Project or a designated portion thereof is the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the entire Project (or such portion thereof as Owner earlier elects to occupy or utilize) for the use for which it is intended. Substantial Completion shall not be deemed to exist until (a) the Owner receives a Certificate of Occupancy for the Project (or such portion as elected by Owner) if such Certificate of Occupancy is required, and any other permits, approvals, licenses and any other documents from governmental authorities having jurisdiction therefore necessary for the beneficial occupancy of the project and (b) the Contractor, Engineer and Owner have agreed upon a schedule to provide the Owner with all as-built drawings, operating manuals, warranties and other required closeout documents. This date shall be established by a Certificate of Substantial Completion signed by the Owner, Engineer and Contractor and shall state their respective responsibilities for security, maintenance, heat utilities, damage to the Work for its intended use and insurance. This Certificate shall also list the items to be completed or corrected together with a price for each item and a time for their completion and correction. If additional observations are required as a result of the Contractor's failure to complete work on a timely basis, the

costs of the Owner's consultants for such additional observations amount will be deducted from the Contractor's Contract. Notwithstanding the Date of Substantial Completion, any warranties called for by the Agreement or by the Drawings and Specifications shall commence on the date of Final Payment.

...

§ 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 prepare and submit to the ~~Architect~~ Engineer 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 Contractor's list, the Architect 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 Contractor's 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 Engineer and the Owner to determine Substantial Completion.~~

...

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the ~~Architect~~ Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. ~~Warranties required~~

...

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

...

~~by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated~~

§ 9.8.5.1 In conformance with New York General Municipal Law Section 106-b(1)(a), upon proper execution of Certificate of Substantial Completion of Work, the Contractor shall submit a requisition for payment of the remaining amount of the Contract Sum. Upon certification of payment by the Engineer, the Owner will approve and promptly pay the remaining amount of the Contract Sum less two times value of any remaining items to be completed and/or corrected and less an amount necessary to satisfy any claims, liens or judgments against Contractor which have not been suitably discharged. Such payment shall be made under terms and conditions governing final payment except that the Owner's making of such payment shall not constitute the Owner's waiver of any objection to all or any portion of the Work performed by the Contractor or any claims the Owner may then have against the Contractor.

...

~~portion thereof unless~~ **§ 9.8.5.2** Neither the requisition for payment stipulated in Section 9.8.5.1 nor any portion of retained percentage shall become due until the Contractor submits to the Engineer:

~~otherwise provided.~~ 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 under Section 9.8.5.1 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.

...

§ 9.8.5.3 As remaining items of Work are satisfactorily completed or corrected, the Contractor may submit a requisition for payment of these items. The Contractor shall submit with each such requisition for payment affidavits, consents of surety, and other data as described in the Certificate Section 9.8.5.2 covering work for which payment is requested. Upon certification of such requisitions by the Engineer, the Owner will approve and promptly pay the requisition less an amount two times that which is necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

...

§ 9.8.5.4 Where the Project includes heating and/or air conditioning, electrical, communication, data or other systems which are not put into operation at the time of occupancy, a sum shall be withheld until these systems have operated to the general satisfaction of the Engineer. Contractor shall provide complete start up and commissioning of the systems with a detailed check list as recommended by the equipment and/or system manufacturer. The retained amount shall approximate five percent (5%) of the cost of the systems as determined by the cost breakdown submitted. The guaranty/warranty period for such systems will not commence until after authorization of final payment for such systems.

...

~~of Substantial Completion.~~ § 9.8.5.5 No partial payments will be made after the time fixed for the completion of the Work or the time to which completion may be extended under the terms of the Contract, until the full and final completion and acceptance of all Work herein agreed upon.

...

§ 9.8.5-9.8.6 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

...

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and take over, use, occupy or operate any part of the completed or partly completed Work, and the Contractor shall not in any way interfere with or object to the use, occupancy, or operation of such Work by the Owner after receipt of notice in writing from the Owner that such Work or part of the Work will be used by the Owner on and after the date specified in such notice, provided, however, that the insurer consents as required in Section 11.3.1.5 and the use or occupancy is 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 shall 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. Work. Upon any such occupancy, as between the parties, the Owner shall become responsible for all safety and security and the payment of all utility charges with respect to the Work or part of the Work occupied by the Owner. If the parties are unable to arrange conveniently for the allocation of utility charges between them, the Owner shall become responsible for all such charges.

...

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect-Engineer 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 Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

...

§ 9.9.4 Contractor shall cooperate with the Owner in order to make portions of the Project available as soon as possible.

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§ 9.9.4.1 The Site and buildings, whether work of Contractor is partially or fully completed or not, are property of the Owner who shall have certain rights and privileges in connection with use of same.

...

§ 9.9.4.2 Should there be, in the opinion of the Engineer unwarranted delay on part of any Contractor in completion of incomplete or defective work or other Contract requirements, and the Engineer so certifies, the Owner may have full or partial use and occupancy of any or all portions of buildings as required for moving in or installing furniture, fixtures, supplies, or equipment and for general cleaning and maintenance work. In such event, the Contractor whose unfinished work is done subsequent to installation of furniture, fixtures, equipment, etc., shall be responsible for the prevention of any damage to such installation. Such use or occupancy by the Owner shall in no instance constitute acceptance of any of the Work.

...

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect-Engineer~~ and the Owner will promptly make such inspection and, when the ~~Architect-Engineer~~ finds the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect-Engineer~~ will promptly issue a final Certificate for Payment stating that to the best of the ~~Architect's-Engineer's~~ knowledge, information and belief, and on the basis of the ~~Architect's~~ ~~Engineer's~~ on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The ~~Architect's-Engineer's~~ final 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. The Owner shall not be bound by the Engineer's final Certificate for Payment, and it may make its own investigation of the progress of the Contractor's Work and shall be obligated to pay only for Work actually completed by the Contractor in accordance with the Contract Documents.

...

§ 9.10.1.1 If the Work is not accepted by the Owner after final inspection and additional time is required to complete items identified during the final inspection, the date starting the one-year correction period described in Article 12 shall be set by the Engineer at its discretion.

...

§ 9.10.1.2 If the Engineer is required to provide additional services, extend the duration of services to the Owner, and/or perform additional final inspections because the Work fails to comply with the requirements of the Contract, or the Contractor did not complete the Work in accordance with the construction schedule, the amount of compensation paid to the Engineer by the Owner for additional services shall be deducted from the final payment to the Contractor.

...

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect (1)-Engineer~~:

...

.1 all closeout documents required by the Contract Documents;

...

.2 as-built drawings for the Work per the closeout requirements set forth in Division 1 of the Specifications;

...

.3 confirmation that all start-up, testing, balancing and commissioning of systems, equipment and other materials has been successfully completed as required by the Contract Documents;

...

.4 appropriate instruction and training regarding the use, operation and maintenance of all systems, materials and equipment has been provided to the operation and maintenance personnel of the Owner;

...

.5 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the ~~Owner's~~ Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, ~~(2) the form of which will be AIA Document G706-1994, "Contractor's Affidavit of Payment of Debts and Claims";~~

...

.6 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' days' prior written notice has been given to the Owner, ~~(3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) Owner;~~

...

.7 consent of surety, if any, to final payment and ~~(5) payment, the form of which will be AIA Document G707-1994, "Consent of Surety to Final Payment";~~

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.8 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner.~~ Owner; and

...

.9 all warranties and guarantees required by the Contract Documents.

...

If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable ~~attorneys' attorneys'~~ fees.

...

§ 9.10.2.10 In addition to the submittals required in Section 9.10.2, the Contractor shall submit separate release or waivers of lien for each Subcontractor, material supplier, or others with lien rights against the Project, and shall submit a list of such parties.

...

§ 9.10.2.11 Submittals required above shall be made in accordance with procedures described in Division

...

§ 1.

...

§ 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 ~~Architect~~ Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the ~~Architect~~ Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed 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 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~~ Engineer 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.

...

.2 failure of the Work to comply with the requirements of the Contract Documents;~~or~~

...

.3 terms of special warranties required by the Contract ~~Documents~~ Documents;

...

.4 Claims for indemnification;

...

.5 Claims about which the Owner has given the Contractor written notice; and

...

.6 Claims arising after final payment

...

§ 9.10.6 At any time a lien is filed against the Project funds, the Owner may demand that the Contractor discharge said lien, through bonding or otherwise, and the Contractor must obtain the discharge of said lien within seven days of such demand.

...

§ 9.10.7 Existing warranties shall not deprive the Owner of any cause of action, right, or remedy otherwise available for breach of any of the provisions of the Contract Documents. The periods referred to above shall not be construed as limitations on the time in which the Owner may pursue any such action, right or remedy.

...

§ 9.10.8 The Contractor shall achieve Final Completion of all Work, including, without limitation, correction of punch-list items, preparation and delivery of all manuals, presentation of training and completion of final paper submissions not later than thirty (30) days following the date of Substantial Completion. In the event the Contractor shall fail to achieve Final Completion within such a period of time, the Contractor and the Contractor's surety, if any, shall be liable for and shall reimburse the Owner for any and all fees paid to the Engineer, materials, and other expenses made necessary by the Contractor's failure. Additional fees and expenses shall be charged by the Owner against any Final Payment due or which may become due to the Contractor, and the Contractor shall promptly pay or refund the Owner the excess, if any, upon the Owner's written request.

...

§ 9.10.9 Warranties required by the Contract Documents shall commence on the date when Final Payment is received by the

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ARTICLE Contractor.

...

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

...

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

...

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

...

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of
construction.

...

.4 construction or operations by the Owner or other Contractors, and

...

.5 the existing buildings and premises in the vicinity of or affected by the Contractor's operations.

...

Safe access to and egress from any building under construction as part of this Contract, or any existing

...

building in which Work is being done under this Contract, shall be maintained and remain unencumbered

...

by each Contractor in accordance with all applicable codes, rules and regulations of authorities having

...

jurisdiction on the Work. Contractors and Subcontractors shall cooperate in maintaining this condition.

...

Roadways, paths, walks, exits, service drives and other areas shall remain unobstructed and shall be

...

maintained in a safe and satisfactory condition, for all persons using the building and premises. Materials

...

shall not be stored promiscuously about the site or in the building, but shall be carefully stored in areas

...

which will not interfere with pedestrian traffic nor with access to and egress from adjacent properties and

...

use of the building. Each Contractor shall provide and maintain such temporary Work as may be required

...

for the protection of its finished Work where liable to injury. Each Contractor will be responsible for all of

...

its Work, materials and equipment that may be damaged or stolen during the duration of the Contract and

...

until the Work is accepted by the Owner. Each Contractor shall make good any such damage or loss

...

without expense to the Owner. Each Contractor shall not permit unnecessary hazards to be created nor

...

permit them to continue if they are discovered. Contractor's storage and staging areas shall be only in

...

locations assigned or approved by the Owner and may be required to be relocated by the Contractor as building occupancy or use changes during the course of the Work. This relocation will be done by the Contractor at no additional cost to the Owner.

...

§ 10.2.2.1 The Contractor acknowledges that the Labor Law of the State of New York, and regulations adopted thereunder, place upon both the Owner and the Contractor certain duties and that liability for failure to comply therewith is imposed on both the Owner and the Contractor regardless of their respective fault. The Contractor hereby agrees that, as between the Owner and the Contractor, the Contractor is solely responsible for compliance with all such laws and regulations imposed for the protection of persons performing the Contract. The Contractor shall defend, indemnify and hold harmless the Indemnitees, as defined in Section 3.18 of and from any and all liability for violation of such laws and regulations and shall defend any claims or actions which may be brought against the Owner as a result thereof. In the event that the Contractor shall fail or refuse to defend any such action,

the Contractor shall be liable to the Owner for all costs of the Owner in defending such claim or action and all costs of the Owner, including, without limitation, attorneys' fees incurred in recovering such defense costs from the Contractor.

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§ 10.2.3.1 Temporary barricades, tunnels, partitions, fencing and such other structures shall be constructed and maintained by the Contractor as may be necessary to maintain building exits and control access to the Contractor's Work and operations.

...

§ 10.2.4.1 Storage of Hazardous Materials: Use and storage of propane gas, refrigerants, solvents, paints and other hazardous or dangerous materials shall be subject to the latest codes and regulations applicable in the County of Westchester, New York and the local jurisdiction within which the Project is located, of OSHA and any other federal, state or local regulatory body requiring more stringent conditions.

...

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 through 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 and 10.2.1.3, through 10.2.1.5, except damage or loss attributable to acts or omissions of the Owner or Architect-Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3-18.3.18, and shall not be limited by such damage or loss being insured under property insurance required by the Contract Documents.

...

§ 10.2.6 The Contractor shall 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 and Architect-Engineer.

...

§ 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. No Contractor shall load any part of the Work with materials, equipment, shores, bracing, or other items which in any way could cause damage to the Work or to other Work or could endanger persons in or about the Work.

...

§ 10.2.8 Restoration: If, during the construction, public or private property is damaged or destroyed as a consequence of its Work, the Prime 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.

...

§ 10.2.9 OSHA.: In addition to all requirements set forth herein, all Contractors and Subcontractors which perform any Work under this Contract will fully comply with the provisions of the federal Occupational Safety and Health Act of 1970, as amended, and with any rules and regulations pursuant to the Act. This requirement shall apply continuously and not be limited to normal working hours. The duty of the Engineer to conduct construction review of the Contractor's or its Subcontractor's performance is not intended to include review of the adequacy of the Contractor's or its Subcontractor's safety measures in, on or near the construction site or buildings.

...

§ 10.2.10 Welding: All welding shall be done in accordance with the American Welding Society Code for Arc Welding, certified for the current year. When cutting or welding is to be done, the Owner MUST be notified prior to the start. In addition, the Contractor for the Work shall provide a fire guard with proper fire extinguisher for the duration of and one-half hour after the cutting and welding work. A welding curtain is to be installed around the area where welding or cutting is to be done. No welding machines will be tied into electric panels without express permission from the Owner. Portable gasoline driven generators may not be used without the express permission of the Owner. The Contractor must obtain the Owner's permission for each location in an existing building where welding is required. Owner's stipulated requirements as a condition for its permission must be adhered to.

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

...

§ 10.2.12 The Contractor shall be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

...

§ 10.2.13 The Contractor shall immediately contact the Owner and Engineer and, within twenty-four hours, report, in writing, to the Owner and Engineer, all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and Engineer.

...

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

...

§ 10.2.15 The Contractor is responsible for restoration and/or repair of utilities, private property, buildings, pavement, walkways, roads, etc. damaged by its activities under this Agreement to the satisfaction of the Owner and Engineer.

...

§ 10.2.16 Title to all completed or partially completed Work at the job site and to all materials delivered to and stored at said job site which are intended to become a part of the completed Work covered by the Contract, shall be in the name of the Owner. Notwithstanding the foregoing, prior to the acceptance of the completed Work by the Owner, the Contractor shall be liable for all loss of, or damage to, said completed Work, partially completed Work, materials furnished by the Contractor, and materials or equipment furnished by others, the custody of which has been given to the Contractor arising from any cause other than a cause against which the Owner herein undertakes to carry insurance. In the event of loss or damage from cause other than those against which the Owner undertakes to carry insurance, the Contractor shall replace or repair the said Work materials at its own cost and expense, to the complete satisfaction of the Owner and Engineer.

...

§ 10.2.17 The Contractor causing damage to the Work of another Contractor shall be responsible for the repair and replacement of such damaged Work. Back charges shall be made when corrections are not made promptly.

...

§ 10.2.18 The Owner reserves the right to pay the Contractor originating the back charge from monies due the Contractor who is responsible for the Work required by same and shall deduct it from the amount due the said responsible Contractor.

...

§ 10.2.19 Contractor originating back charges will determine the amount of the back charges in accordance with Article 7 herein, in order to obtain the Engineer's approval.

...

§ 10.2.20 Contractors under direct Contract with the Owner will be expected to take care of back charges originating with Subcontractors under their employ under the terms and conditions as established herein. Contractors under direct Contract with the Owner, and their Sureties, shall indemnify and hold the Indemnitees (as defined in Section 3.18) harmless from claims of this type, including paying for legal expenses necessary to remove or settle any liens or other legal claims against the Owner.

...

§ 10.2.21 INJURY OR DAMAGE TO PERSON OR PROPERTY

...

If either any party suffers injury or damage to person or property because of an act or omission of the other another party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl

(PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and ~~Architect in writing.~~ Engineer in writing. The Owner shall arrange for the material to be tested and if the test reveals that the material is a hazardous material or substance which has not been rendered harmless, the Owner shall pay for the test; otherwise, the Contractor shall bear the cost of the test and the Contract Sum shall be reduced by the amount of that cost. The Contractor shall comply with the reasonable instructions of the Owner after the test is conducted. This section shall not apply in the case of asbestos which is to be removed and disposed of as part of the Work of this Agreement.

...

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. ~~Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor 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 in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

...

§ 10.3.3 To the fullest extent permitted by law, the ~~Owner-Contractor~~ shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them Indemnitees, as defined in Section 3.18, 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 if the Contractor, or any Subcontractor or person for whose work the Contractor is responsible: (1) brought such material onto the Project site; or (2) failed to timely provide notice of the condition and stop Work in the affected area as required by Section 10.3.1.~~

...

§ 10.3.4 The Owner shall ~~not be responsible under this Section 10.3 under no circumstances bear responsibility for~~ materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. ~~The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of Documents, and the Contractor shall bear full responsibility, and shall indemnify and hold harmless the Indemnitees, as defined in Section 3.18, from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the Contractor's fault or negligence in the use and handling of such materials or substances.~~

...

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

...

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance (that was not brought to the site by the Contractor or those for whom the Contractor is responsible) solely by reason of performing Work as required by the Contract Documents, the Owner shall ~~indemnify-reimburse~~ the Contractor for all cost and expense thereby incurred.

...

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

...

§ 10.3.8 The Contractor shall take all reasonable precautions and measures to prevent any contamination by or spread or disturbance of hazardous or potentially hazardous substances or materials stored, used, or discovered on the Project site.

...

§ 10.4.1 The Contractor shall provide at the site, such equipment and medical facilities as are necessary to supply first-aid service to anyone at the Work.

...

§ 10.4.2 The Contractor must promptly report in writing to Owner and Engineer all emergencies whatsoever arising out of, or in connection with the performance of the Work, whether on, or adjacent to the site, which caused death, personal injury or property damages, giving full details and statements of witnesses. In addition, if death, injury, or damages are caused, the emergency shall be reported immediately to the Owner and Engineer.

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§ 10.4.3 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. ~~Additional compensation or extension~~ Extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

...

§ 10.4.4 All fire and emergency access, including roads, right-of-ways, corridors, doors, and stairs, and all existing fire and smoke detection systems shall be maintained at all times in accordance with fire safety laws. If the Work requires the temporary obstruction of any fire and emergency access or existing fire and smoke detection systems, the Owner and Engineer shall be notified at least 72 hours in advance.

...

§ 11.1 CONTRACTOR'S LIABILITY INSURANCEContractor's Liability Insurance

...

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies ~~lawfully authorized to do business in the jurisdiction in which the Project is located~~ licensed to do business in New York State and one to which the Owner has no reasonable objection, such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

...

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts ~~that which are applicable to the Work to be performed;~~ performed, including private entities performing Work at the site and exempt from the coverage on account of the number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

...

- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's ~~employees;~~ employees or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but obligated by the Contract Documents to provide the insurance required by that section;

...

- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

...

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

...

- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under ~~Section 3.18.3.18;~~

...

- .9 Where the Contract or Subcontract involves asbestos, the insurance required by Section 11.1 shall specifically include the words asbestos abatement work and shall specify any limitations on completed operation time period. If there is a limitation it will be at the Owner's discretion to accept or reject that limitation;

...

- .10 Insurance must remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Section 12.2.2.2; and

...

- .11 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

...

- .1 Premises Operations without exclusion of X, C and U coverage;

...

.2 Independent Contractor's Protective;

...

.3 Products and Completed Operation;

...

.4 Personal Injury Liability;

...

.5 Contractual, including specified provision for Contractor's obligation under Section

...

3.18;

...

.6 Owned, non-owned and hired motor vehicles; and

...

.7 Broad Form Property Damage including Completed Operations.

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§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents herein or required by law, whichever coverage is greater. ~~Coverages, whether written on an occurrence or claims made basis, shall~~ Coverages shall be written on a commercial, occurrence basis and shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The general liability coverage specified in Sections 11.1.1.3 and 11.1.1.4 may be written on either a "Comprehensive General Liability Insurance" policy form or a "Commercial General Liability Coverage Form" provided the limits and coverage comply with that specified below. All coverages are to be written on an occurrence basis unless approved by the Owner.

...

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. ~~Work.~~ No construction will be commenced until the Owner has approved the Contractor's Certificates of Insurance. The Owner shall be listed, by name, on all certificates and policies as an Additional Insured on a primary and non-contributory basis. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that the coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' days prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, Owner and the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate and a copy of the insurance policy evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction 9.10.2.

Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. Certificates of insurance shall be issued on standard forms equal to ACORD 25 (05/2010) forms as manufactured by the ACORD Corporation. Review and acknowledgement of the Certificates of Insurance by the Owner or Engineer shall not relieve or decrease the liability of the Contractor hereunder. The Commercial General Liability and Umbrella Liability insurance policies shall name the Owner, the Engineer and the Engineer's consultants as additional insureds with respect to the Project to which these insurance requirements pertain. Additional insured coverage of the Owner, the Engineer and the Engineer's consultants on the Contractor's commercial general liability policy shall be established by endorsement. Acceptable policy endorsements are ISO Form Additional Insured Endorsement CG 20 10 11 85, or the carrier's manuscript equivalent that covers completed operations. These policies shall be provided on a primary and non-contributory basis, ahead of any insurance carried by the Owner or the Engineer with respect to the Project. The certificates of insurance described in this section with evidence of additional insurance and primary insurance status shall be submitted to the Owner prior to commencement of the Work by the Contractor. Certified copies of all required insurance policies, together with all applicable endorsements, must be delivered to the Owner within sixty (60) days thereafter. The Owner stipulates and agrees that it will hold the certified policy copies in confidence, to be disclosed to and reviewed only by the Owner's administrators at the superintendent or assistant superintendent level, the Owner's legal counsel, and its insurance consultant. The Commercial General Liability and Umbrella Liability policies shall be endorsed to provide that the Contractor's respective insurers will give the Owner as additional insured the same notice, in the same manner and within the same time periods, that they are required by the terms of the policies or by law to give the Contractor as named insured, with respect to any change in coverage or limits, or any cancellation or non-renewal for any reason other than cancellation by the Contractor or non-payment of premium.

...

§ 11.1.4 [Intentionally omitted.]

...

§ 11.1.5 Schedule of Insurance

...

The Contractor, at its own expense, shall procure and maintain the following insurance coverages with limits of liability not less than the limits specified, or greater if required by law. The insurance carriers providing the following coverages shall be licensed to do so in New York State and shall also be rated no lower than "A" by the most recent Best's Key Rating Guide" or Best's Agent's Guide or must be otherwise acceptable to the Owner.

...

§ 11.1.5.1 Workers' Compensation and Employers' Liability

...

Workers' Compensation and Employers' Liability coverage complying with the laws of the State of New York and elsewhere as required and shall include a minimum of:

...

Bodily Injury by Accident: \$500,000 Each Accident

...

Bodily Injury by Disease: \$500,000 Each Employee

...

Bodily Injury by Disease: \$500,000 Policy Limit

...

NYS Disability Insurance shall provide statutory coverage and limits for all covered employees

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§ 11.1.5.2 Commercial General Liability

...

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

...

Occurrence Form:

...

General Aggregate: \$2,000,000

...

Products/Completed Operations

...

Aggregate: \$2,000,000

...

Each Occurrence: \$1,000,000

...

Personal and Advertising Injury: \$1,000,000

...

Fire Damage (any one fire): \$50,000

...

Medical Expense (any one person): \$5,000

...

of revised limits or Products and Completed Operations Coverage must be maintained for a period of at least three (3) years after final payment and must provide that the Owner is an additional insured on a primary basis for the same period. These limits must apply on a per project basis. Coverage must be written on CG0001 form or its equivalent.

...

§ 11.1.5.3 Automobile Liability

...

Business Automobile Liability, including liability arising out of any owned, leased, non-owned or hired automobile with per accident limits of liability of not less than \$1,000,000.

...

§ 11.1.5.4 Pollution Legal Liability Insurance

...

claims paid If Work includes asbestos removal, the Contractor will be required to carry and maintain pollution legal liability insurance coverage with the minimum limits set forth below, in a form acceptable to the Owner and written by an insurance company acceptable to the Owner. Proof of such coverage shall be provided prior to the commencement of the Work. With coverage for the services rendered for the Owner, including, but not limited to removal, replacement enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. The limits shall be as follows:

...

Each Occurrence: \$5,000,000

...

Aggregate: \$5,000,000 (specific to the project)

...

These limits shall include products and completed operations. If retroactive date is used, it must pre-date the inception of the Contract. If the Contractor is using motor vehicles to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948 or equivalent) as well as proof of MCS 90. The coverage shall include a three-year reporting period following substantial completion of the Work.

...

§ 11.1.5.5 Umbrella Liability

...

Provide excess coverage over the Commercial General Liability, the Auto Liability and the Asbestos Liability, if required by contract, policies with limits not less than \$5,000,000 each occurrence and \$5,000,000 aggregate specific to the contract. This coverage shall apply before any other insurance available to the additional insureds.

...

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

...

Bodily Injury (Each Occurrence) \$1,000,000

...

Bodily Aggregate \$2,000,000

...

Property Damage (Each Occurrence) \$1,000,000

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~~General Aggregate, or both, shall be furnished~~ § 11.1.5.7 For all required insurance except Worker's Compensation and Disability benefits, the Owner, the Board of Trustees of the Owner, Engineer, and their officers, employees, elected officials, board members and agents shall be named as Additional Insured on a primary and non-contributory basis including the coverage for ongoing and completed operations. For Commercial General Liability, Contractor must provide forms CG 2010 (11/85), or CG 2010 (10/01) with CG 2037 (10/1), or their equivalent, and such endorsements must be attached to the certificate of insurance. All such policies shall be primary and non-contributory over any and all collectible insurance, and shall provide that they will not be cancelled, allowed to expire or restrictively modified without thirty (30) days' prior written notice to the Owner.

...

§ 11.1.5.8 It is expressly understood and agreed by the Contractor that the insurance requirements

...

with reasonable promptness specified above, except for Professional Liability, contemplate the use of occurrence liability forms. If claims-made coverage is evidenced to satisfy any of the specified requirements, the Contractor shall comply with the following requirements:

...

~~§ 11.1.4 The Contractor shall cause--1~~ If the claims-made coverage terms designate a specific retroactive date, the Contractor shall maintain a retroactive date which is not later than the earlier of (a) the date of the

...
the commercial liability coverage required commencement of the term of this Agreement, or (b) the original coverage retroactive date for the Contractor's first claims-made policy for each and every coverage provided on a claims-made basis;
...

by the Contract Documents. 2 For the duration of this Agreement or any subsequent renewals, if the retroactive date is advanced or if the policy is materially changed, cancelled, or not renewed, the Contractor shall purchase, at its own expense, an Extended Reporting Period ("Tail" coverage) in compliance with the minimum standards prescribed by the Insurance Department of the State of New York in Regulation No. 121 (11 NYCRR 73) or its subsequent amendments or revisions;
...

to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or 3 Upon termination of the services provided to the Owner by the Contractor, the Contractor shall maintain such claims-made coverage without interruption for a period of time equal to the length of any Extended Reporting Period requirement as specified above. If the retroactive date is advanced or if the policy is materially changed, cancelled, or not renewed during this period of time, the Contractor shall purchase, at its own expense, an Extended Reporting Endorsement that is in compliance with the minimum insurance standards prescribed by the Insurance Department of the State of New York in Regulation No. 121 (11 NYCRR 73) or its subsequent amendments or revisions.
...

§ 11.1.5.9 It is expressly understood and agreed that:
...

.1 The amount of insurance provided in the aforementioned insurance coverages shall not be construed to be a limitation of the liability on the part of the Contractor or any of its Subcontractors.
...

.2 Any type of insurance or any increase in limits of liability not described above which the Contractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense and shall not be charged back to the project.
...

.3 The carrying of insurance described shall in no way be interpreted as relieving the Contractor or any Subcontractor of any responsibility or liability under the Contract.
...

.4 In the event of a failure of Contractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Owner shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of the Contractor who agrees to furnish all necessary information thereof and to pay the cost thereof to the Owner immediately upon presentation of an invoice.
...

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

...

§ 11.1.5.10 Where the Contract or Subcontract involves abatement of asbestos, the insurance required by the Contractor's negligent acts this Section 11.1 shall specifically include the words "asbestos abatement work", shall include professional liability and pollution liability coverage, and shall specify any limitations on the completed operations time period. If there is a limitation, it will be accepted or rejected at the Owner's discretion.

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~~or omissions during the Contractor's operations; and (2)~~ § 11.1.5.11 The Contractor shall provide asbestos abatement liability insurance with an express provision that the Owner will be provided a defense and will be indemnified if an asbestos-related accident or release occur in connection with the Contractor's Work under this Contract and create liability for asbestos wastes or any other environmental condition herein. The Contractor expressly agrees to name the Owner as an additional insured for claims caused on its asbestos abatement liability insurance policy for a period of not less than three (3) years following the acceptance by the Owner of the certificate of completion.

...

~~in whole~~ § 11.1.5.12 If asbestos abatement liability insurance is not available from an insurer licensed to sell insurance in the State of New York, the Contractor shall immediately notify the Owner so that other appropriate insurance can be written.

...

~~or in part by the Contractor's negligent acts~~ § 11.1.5.13 The Contractor or Subcontractor performing asbestos removal shall provide insurance which contains an endorsement providing coverage for the asbestos removal / treatment / abatement activities which are the subject of this Work.

...

~~or omissions during the Contractor's completed operations.~~ § 11.1.5.14 The Contractor or Subcontractor shall provide fully completed New York Construction Certificate of Liability Insurance Addenda (ACORD 855 2014/05) with the certificates of insurance.

...

§ 11.2 OWNER'S LIABILITY INSURANCEOwner's Liability Insurance

...

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

...

§ 11.3 PROPERTY INSURANCEProperty Insurance

...

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract ~~Modifications~~ modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The insurance shall not, however, cover the Contractor's and its employees' or Subcontractors' equipment, tools, materials, or supplies that will not be incorporated into the completed Project.

...

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for ~~Architect's~~ the Engineer's and Contractor's services and expenses required as a result of such insured loss.

...

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

...

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. [Intentionally omitted.]

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§ 11.3.2 ~~BOILER AND MACHINERY INSURANCE~~

...

Boiler and Machinery Insurance.

...

§ 11.3.3 LOSS OF USE INSURANCE

...

Loss of Use Insurance.

...

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, ~~at-adjointing~~ or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

...

§ 11.3.7 WAIVERS OF SUBROGATION

...

The Waivers of Subrogation. If permitted by both the Owner's and Contractor's insurance companies without penalty, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, employees each of the other, and (2) the Architect, Architect's Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, Engineer, Engineer's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

...

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

...

§ 11.3.9 If required [Intentionally omitted.]

...

§ 11.3.10 [Intentionally omitted.]

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§ 11.4 Performance Bond and Payment Bond

...

in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner **§ 11.4.1** The Contractor shall furnish, in duplicate, bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds shall be obtained from a surety company satisfactory to the Owner, licensed to do business in the State of New York (where the project is located), and listed in the latest issue of the U.S. Treasury Circular 570. The amount of each bond shall be equal to one hundred percent of the Contract Sum. Each bond shall be maintained throughout the duration of the Project.

...

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 between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the § 11.4.2 Bonds shall be prepared on AIA Documents A312 - Performance Bond and A312 - Payment Bond, without modifications other than statements that (1) the bonds are given as statutory bonds with Section 13 of the Performance Bond and Section 14 of the Payment Bond applying in full, without exception, and (2) the Performance Bond includes performance of the Contractor under any warranties in the Contract Documents, including performance after the dates of Substantial and Final Completion. The cost of such bonds shall be included in, and shall not increase, the Contract Sum. In addition, Bonds shall be revised as set forth in 11.4.2.1 and 11.4.2.2. Notwithstanding any provisions to the contrary in any Bond, all Bonds shall be deemed to include and to incorporate the revisions set forth in 11.4.2.1 and 11.4.2.2

...

Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7. § 11.4.2.1 Notwithstanding any other provisions in any Performance or Payment Bond, it shall not be a condition precedent to termination of a Contract or Contractor that notice be sent to or meeting be arranged or held with a Contractor (Principal) and/or surety, prior to such termination. Any such requirement(s) shall be void and unenforceable and the Owner shall have the right to reject any such bond(s) and/or ignore such condition. The exclusive method of termination of a Contract or Contractor is contained in the Contract Documents, and a Contractor and surety expressly agree to be bound thereby.

...

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in 11.4.2.2. A Rider including the following provisions shall be attached to each Performance Bond: "Surety agrees that it consents to and waives notice of any addition, alteration, omission, change or other modification of the Contract Documents. Such addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not relieve the surety of its obligations hereunder, and notice to the surety of such matters is hereby waived." Notwithstanding the absence of any such Rider to any Performance Bond, the language set forth in this section shall be deemed to be included and incorporated within any such Performance Bond.

...

the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators. § 11.4.3 The Contractor shall deliver the required bonds to the Engineer for transmittal to the Owner not later than three (3) days following the date the Agreement is executed, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished. The Contractor shall submit with and at or before the same time the bonds are delivered the most recent A.M. Best Rating and Analysis for the proposed surety and evidence that the proposed surety is admitted and licensed to do business in the State of New York.

...

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

...

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements. 11.4.4 The Contractor shall require the attorney-in-fact who executed the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

...

or specifically required in the Contract Documents on the date of execution of the Contract. § 11.4.5 The Owner reserves the right to make additions, omissions or changes in the Work. The Contractor shall keep the surety advised of all Modifications to the Contract Documents.

...

§ 11.4.2-11.4.6 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.

...

§ 11.5 MAINTENANCE BOND

...

§ 11.5.1 As a condition to the Owner's acceptance of the Certificate of Substantial Completion under Section 9.8.2, the Contractor shall deliver to the Engineer a maintenance bond in a form acceptable to the Owner in an amount equal to ten percent (10%) of the Contract Sum to secure the Contractor's obligations under Section 12.2.2.

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Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

...

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

...

§ 12.1.2 If a portion of the Work has been covered that the ~~Architect has Engineer~~ and the Owner have not specifically requested to examine prior to its being covered, the ~~Architect Engineer and the Owner~~ may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

...

The Contractor shall promptly correct Work rejected by the ~~Architect Engineer or the Owner~~ or failing to conform to the requirements of the Contract Documents, whether discovered before or after ~~Substantial Completion-Final Payment~~ 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 ~~Architect's Engineer's~~ services and expenses made necessary thereby, shall be at the Contractor's expense.

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one year after the date of Substantial Completion of~~ two years after the date of Final Payment for the Work or designated portion thereof or after the date for commencement of warranties established under ~~Section 9.9.1~~, otherwise in the Contract Documents, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the ~~one year two year~~ period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or ~~Architect, Engineer~~, the Owner may correct it in accordance with Section 2.4.

...

§ 12.2.2.2 The ~~one year two 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-Final Payment~~ and the actual completion of that portion of the Work.

...

§ 12.2.2.3 The ~~one year~~ period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. Upon completion of any Work under or pursuant to this Section 12.2, the two- year correction period in connection with the Work requiring correction shall be renewed and recommence from the date such correction is accepted by the Owner.

...

§ 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, not to exceed forty-five (45) days from the date the Contractor received written notice from the Owner per Section 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 Engineer issued, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) 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 Engineer'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.

...

§ 12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

...

§ 12.2.5-12.2.5.1 The Contractor shall also replace or repair to satisfaction of Owner any or all damage done to the building or its contents or to work of other trades in consequence of work performed in fulfilling any applicable warranty. This clause is general in nature and will not operate to waive stipulations of other clauses that specify warranty periods in excess of two (2) years.

...

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

...

§ 12.2.7 The corrective remedies set forth in this Paragraph 12.2 are not exclusive and shall not deprive the Owner of any action, right, or remedy otherwise available to it for breach of any of the provisions of the Contract Documents and for any damages suffered by the Owner as a result of such defects in the Work.

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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. For this Section to apply, the Owner must accept non-conforming Work in writing specifying the non-conforming Work being accepted. Notwithstanding any acceptance by the Owner, if the Owner discovers non-conforming Work that

the Owner has not expressly accepted in writing, the Owner may demand that the Contractor correct such Work as per the provisions of Article 12 hereof.

...

§ 13.1.1 The Contract shall be governed by the law of the ~~place where~~ State of New York, and the parties expressly agree that any claim, dispute, or other controversy of any nature arising out of the Contract or performance of the Work shall be commenced and maintained in New York State Supreme Court, Westchester County.

...

~~the Project is located except that, if the parties have selected arbitration~~ § 13.1.2 The Contractor shall at all times observe and comply with all Federal and State Laws and all Laws, Ordinances and Regulations of the Owner, in any manner affecting the Work and all such orders decreed as exist at present and those which may be enacted later, by bodies or tribunals having jurisdiction or authority over the Work, and the Contractor shall defend, indemnify and save harmless the Indemnitees (as defined in Section 3.18) against any claim or liability arising from, or based on, a violation of any such law, ordinances, regulation, order or decree, whether by Contractor or by its employee or agents.

...

~~as the method of binding dispute resolution, the Federal Arbitration Act~~ § 13.1.3 Except as other specified, the Contractor shall comply with the current editions of applicable specifications of the following agencies, herein referenced. In the case of conflicting requirements, the most stringent shall apply: New York State Department of Health (NYSDH); 2009 NYS Building Code; U.S. Department of Commerce, Commercial Standards (C.S.); New York State Department of Public Work (NYSDPW); American National Standards Institute (ANSI); National Electric Code (NEC); American Insurance Association; National Fire Protection Association (NFPA); Americans with Disabilities Act (ADA); SMACNA - Technical Manuals and Standards; IAQ (Indoor Air Quality) Guidelines of Occupied Buildings Under Construction - 1995.

...

~~shall govern Section 15.4.~~ § 13.1.4 Building codes, regulations, and other applicable governmental requirements shall govern the Work of this Project. The Contractor shall comply with all requirements of the Occupational Safety and Health Administration (OHSA) of the U.S. Department of Labor, and all regulations of the New York State Labor Law pertaining to hazardous conditions that may develop in connection with the Work of this Contract. All Work and materials of the Contract shall comply with all federal, state, county and local building, health, plumbing, HVAC, and electrical codes, laws, ordinances and regulations that apply to the Work. All Work of this Project shall be subjected to the provisions of all applicable requirements of local utility company regulations. Any covered product or material used shall comply with combustion/toxicity tests as found in the New York State Building Code and shall be listed by the Department of State Building Materials and Finishes Data File.

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§ 13.4.2 No action or failure to act by the Owner, ~~Architect-Engineer~~ 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 there under, except as may be specifically agreed in writing.

...

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the ~~Architect Engineer and the Owner~~ timely notice of when and where tests and inspections are to be made so that the ~~Architect Engineer and the Owner~~ may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

...

§ 13.5.2 If the ~~Architect-Engineer~~, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the ~~Architect Engineer~~ 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 ~~Architect-Engineer~~ of when and where tests and inspections are to be made so that the ~~Architect Engineer and the Owner~~ may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

...

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 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 ~~Architect's-Engineer's~~ services and expenses shall be at the Contractor's ~~expense-expense~~, including the cost of retesting for verification of compliance if necessary until the Engineer certifies that the Work in question does comply with the requirements of the Contract Documents, and none of such costs shall be included in computing the Contract Sum. The Contractor shall also replace or repair to the satisfaction of the Owner any and all damage done to the building or its contents or to work of other trades in consequence of Work performed in fulfilling the Contractor's warranty obligations. This clause is general in nature and will not operate to waive other clauses that may specify warranty or correction periods in excess of one (1) year.

...

.

...

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the ~~Architect-Engineer and the Owner~~.

...

§ 13.5.5 If the ~~Architect is-Engineer and the Owner are to~~ observe tests, inspections or approvals required by the Contract Documents, the ~~Architect-Engineer and the Owner~~ will do so promptly and, where practicable, at the normal place of testing.

...

~~Payments due and unpaid~~ [Intentionally Omitted]

...

§ 13.7 TIME LIMITS ON CLAIMS

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~~under the Contract Documents shall bear interest from the date payment is due at such rate as~~ § 13.7.1 No action or proceeding shall lie or be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any claim arising out of or based upon the Agreement or the Contract Documents or by reason of any act or omission or requirements relating to the giving of notices and information, unless such action or proceeding shall be commenced within one (1) year after submission to the Owner of the final Application for Payment. As to a claim based upon money required to be retained for any period after the date of the final Application for Payment, such action must be commenced within six (6) months after such money becomes due and payable under the terms of the Contract. If the Contract is terminated by the Owner, such action must be commenced within six (6) months after the date of such termination. The Contractor's acceptance of final payment shall constitute a release of all claims against the Owner. This provision shall not relieve the Contractor of the obligation to comply with the provisions of the law relating to notices of claim.

...

~~the parties may 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.~~ § 13.7.2 Acts or failures to act occurring during the construction of the Project or following the issuance of the final certificate for payment, which give rise to a cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor, whichever occurs last.

...

§ 13.7 TIME LIMITS ON CLAIMS § 13.8 LABELED MATERIAL AND EQUIPMENT

...

~~The Owner and~~ § 13.8.1 The term "labeled" shall apply to materials or equipment to which has been attached a label of a nationally recognized testing laboratory that maintains periodic inspection of materials or equipment and by whose labeling, compliance with nationally recognized standards or the conduct of tests to determine suitable usage in a specified manner, is assured. Unless otherwise specified, the Underwriters Laboratories, Inc. is the recognized agency for required labeling.

...

§ 13.9 SEPARATION OF METALS

...

~~Contractor shall commence all claims and causes of action, whether in contract, tort, breach~~ § 13.9.1 Each Contractor shall separate all dissimilar metals with vinyl gaskets or a heavy coat of bituminous paint (except where bitumen may react with caulking or other materials) to prevent corrosive or electrolytic action. Where there is a conflict as to which Contractor or Subcontractor provides the separation materials, the Contractor or Subcontractor whose Work is installed after the Work requiring separation shall provide the separation materials.

...

§ 13.10 MANUFACTURER'S AND TRADE STANDARDS

...

~~of warranty or otherwise, against the other arising out of~~ § 13.10.1 Whenever any manufacturer of material utilized in the Project issues recommended fabrication, installation, erection, and/or application standards or instructions, such standards or instructions shall be strictly followed in the performance of the Work, except as specified otherwise.

...

~~or related to the Contract~~ § 13.10.2 Whenever any trade, organization, institution, utility company, code group, society, association and governing board standard, or requirement of specification is adopted by reference in the Contract Documents, all Work related thereto shall be performed in strict accord with the referenced edition thereof and amendments thereto, except where a higher standard is specifically required by the Contract Documents.

...

~~in accordance with the requirements of the final dispute resolution method selected~~ § 13.10.3 The Contractor shall take full responsibility for failure of materials, devices, equipment, systems, and finishes not fabricated, installed, erected, or applied in accord with the requirements of this Article and shall remove, replace, repair or correct any such failures or deficiencies promptly upon notification by the Owner or Engineer

...

§ 13.11 No Oral Waiver or Constructive Changes

...

in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by the Owner, and shall not relieve the Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

...

§ 13.12 Notices Regarding Liens The Owner and Contractor shall provide to the Owner copies of all notices of any type regarding liens received from Subcontractors, Sub-subcontractors, or suppliers to the Contractor.

...

~~Contractor waive all claims and causes of action not commenced in accordance with this Section~~
13.7. § 13.13 Wages Rates Contractor shall comply with prevailing wage rate determinations as issued by the State of New York Department of Labor for the location and duration of this project.

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§ 14.1 TERMINATION BY THE CONTRACTOR Termination by the Contractor

...

- .3 Because the ~~Architect has not~~ Engineer has not certified or issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in ~~Section 9.4.1, herein,~~ or because the Owner has not made payment after ten (10) days written notice of such failure to make payment provided that such failure is not due to a disputed amount, and except to the extent the Owner is excused from timely making all or part of any payment on a Certificate for Payment ~~within the time stated in~~ as per any other provision of the Contract Documents; or

...

- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by ~~Section 2.2.1, Article 2 hereof.~~

...

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, 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.

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven-thirty days' written notice to the Owner and ~~Architect, Engineer,~~ terminate the Contract and recover from the Owner payment for ~~Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~ such completed Work that has not otherwise been compensated, but in no event shall the Owner be liable to the Contractor for any prospective loss, including, but not limited to, termination expenses, lost profits or unabsorbed overhead. Notwithstanding the foregoing, any such payments to the Contractor shall be less any setoffs to which the Owner may be entitled as per any other provision of the Contract Documents.

...

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and ~~the Architect, Engineer,~~ and upon the failure of the Owner to cure the alleged ground for termination within the seven days additional period, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

§ 14.2 TERMINATION BY THE OWNER FOR CAUSETermination by the Owner for Cause

...

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

...

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

...

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

...
.5 is substantially behind schedule as determined by the Engineer or Owner;

...
.6 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;

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...
.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 requirements of the Contract Documents;

...
.8 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents;

...
.9 fails or neglects to progress the Work in such a manner as to reasonably assure the completion of the Work with the Contract Time or in accordance with the Construction Schedule;

...
.10 disregards the instructions of the Engineer or Owner (when such instructions are based on the requirements of the Contract Documents);

...
.11. fails to keep the Project free from strikes, work stoppages, slowdowns, lockouts, or other disruptive activity;

...
.12 Contractor's progress of the Work is such that Substantial and/or Final Completion will not be

...
achieved on or before the required completion dates, provided that the Contractor is not then entitled

...
to an extension of Contract Time; or

...
.13 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's

...
creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a

...

petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws.

...

§ 14.2.2 When any of the above reasons exist, the ~~Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ 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-three~~ seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the ~~Architect's~~ Engineer'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 be certified by the ~~Initial Decision Maker, upon application,~~ Engineer, and this obligation for payment shall survive termination of the Contract.

...

§ 14.2.4.1 The costs of finishing the Work also include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect and consequential damages incurred by the Owner by reason of the termination of the Contractor as stated herein.

...

§ 14.2.5 If the Owner wrongfully terminates the Contract for cause, the rights, remedies and obligations of the parties will be the same as if the Owner had terminated the Contract for convenience under Section 14.4.

...

§ 14.2.6 In the event that the Contractor, or the Contractor's surety, challenges the Owner's termination of the Contract for Cause, and the Owner prevails in litigation in connection with such challenge, whether initiated by the Owner or by the Contractor and/or the Contractor's surety, the Owner shall be entitled to its costs, including reasonable attorney's fees, incurred as a result of such litigation, as part of any judgment against the Contractor and/or the Contractor's surety. Such costs, including reasonable attorney's fees, shall be deemed a cost of finishing the Work.

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

...

§ 14.4.1 The Owner may, at any time, terminate the Contract Agreement for the Owner's convenience and without cause. Notwithstanding any other provision to the contrary in the Agreement, the Owner reserves the right at any time and in its absolute discretion to terminate the services of the Contractor and/or the Work by giving written notice to the Contractor. This termination for convenience of the Owner provision allows and authorizes the Owner to terminate this Contract at any time and for any reason whatsoever. This right may be exercised by the Owner in its complete discretion. Termination by the Owner under this Section shall be by Notice of Termination delivered to the Contractor specifying the extent of termination and the effective date.

...

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately and in accordance with instructions from the Owner:

...

- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;and

...

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; and

...

- .4 proceed to complete the performance of the Work required under portions of the Contract not terminated, if any.

...

§ 14.4.3 ~~In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of~~ Upon receipt of written notice of the Owner's exercise of such termination, the Contractor shall be entitled to, and the Owner shall reimburse the Contractor for, an equitable portion of the Contractor's fee based on the portion of the Work completed before the effective date of termination and for any other reasonable costs attributable to such termination. The Contractor's entitlement to payment for all such work shall be predicated on its performance of such work in accordance with the Contract Documents as certified by the Engineer. The Contractor shall be entitled to no other payment and waives any claim for damages including, but not limited to, lost profits, any prospective loss, underutilization of personnel or equipment, unabsorbed overhead, and any and all items of consequential loss or damage. The Owner shall be entitled to credit against any payment to be made to the Contractor pursuant to this Section 14.4 the following: (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims which the Owner has against the Contractor under the Contract Documents; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor, the cost of which is included in the Contract Sum.

...

~~such termination, along with reasonable overhead and profit on the Work not executed.~~ **§ 14.4.4** Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

...

A Claim is a demand or assertion by ~~one of the parties~~ the Contractor seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term ~~"Claim"~~ "Claim" also includes other disputes and matters in question ~~between the Owner and~~ raised by the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the ~~party making the Claim~~ Contractor.

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Claims by ~~either the Owner or Contractor~~ must be initiated by written notice to the ~~other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.~~ Claims by ~~either party~~ Owner and the Engineer. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is ~~later~~ earlier. Failure to do so shall be an irrevocable waiver of the Claim.

...

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in ~~Section 9.7 and Article 14, elsewhere in the Agreement,~~ 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 Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker. Documents; provided, however, that the Contractor shall use its best efforts to furnish the Engineer and Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Engineer and the Owner in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim.~~

...

~~If~~ [Intentionally Omitted]

...

§ 15.1.4.1 The Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time if:

...

~~the Contractor wishes to make.~~ 1 The Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Sum and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or

...

~~a Claim for an increase.~~ 2 The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for the Contractor prior to Contractor's making such final commitment;

...

3 The Contractor failed to give the written notice within the time and as required by Section 15.1.2; or

...

~~in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.4~~ If the Owner and the Contractor are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Sum or Contract Times, a claim may be made therefore as provided in Article 15. However, the Owner and Engineer shall not be liable to the Contractor for any claims, costs, losses or damages sustained by the Contractor on or in connection with any other project or anticipated project.

...

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice ~~as provided herein shall be given. The Contractor's Claim shall include an estimate shall be given by the Contractor to the Engineer within 7 days of its commencement. The failure to give such notice shall constitute an irrevocable waiver of the Claim. In the case of a continuing delay only one Claim is necessary.~~

...

~~of cost and of probable effect of delay on progress~~ **§ 15.1.5.1.1** An application for extension of time must set forth in detail the nature of the alleged cause of delay, the dates upon which such cause of delay began and ended, the number of days attributable to each of such causes, and the probable effect on the previously approved progress schedule.

...

§ 15.1.5.1.2 Failure to strictly comply with these requirements may be deemed sufficient cause to deny an extension of time.

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~~of the Work. In the case of a continuing delay, only one Claim is necessary.~~ **§ 15.1.5.1.3** The Owner shall not be liable to the Contractor and/or any Subcontractor for claims or damages of any nature caused by or arising out of delays. The sole remedy against the Owner for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be subject to the claims procedure set forth herein. Except to the extent, if any, expressly prohibited by law, the Contractor expressly agrees not to make and hereby waives any claim for damages for delay, including, but not limited to, those resulting from increased labor or material, directions given or not given by the Owner or Engineer, including scheduling and coordination of the Work; the Engineer's preparation of drawings and specifications or the Engineer's review of shop drawings and requests for instructions; or, on account of any delay, obstruction or hindrance for any cause whatsoever by the Owner Engineer or any other contractor on the Project whether or not foreseeable or anticipated. The Contractor agrees that its sole right and remedy therefore shall be an extension of time, if appropriate. It is emphasized that no monetary recovery may be obtained by the Contractor for delay against the Owner or Engineer based on any reason and that the Contractor's sole remedy, if appropriate, is additional time.

...

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. In planning its construction schedule within the agreed Contract Time, it shall be assumed that the Contractor has anticipated the amount of adverse weather conditions normal to the site of the Work for the season or seasons of the year involved. Only those weather delays attributable to other than normal weather conditions will be considered by the Engineer.

...

The Contractor and Owner waive Claims against each other for consequential damages waives any and all claims for consequential damages of any kind and nature arising out of or relating to this Contract. This mutual waiver includes waiver of consequential damages shall survive termination of the Contract.

...

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;~~ § 15.1.7 The Owner shall not be liable to the Contractor and/or Subcontractor for financial Claims or monetary damages of any nature caused by or arising out of delays. The sole remedy against the owner for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be subject to the Claims procedure set forth herein. Except to the extent, if any, expressly prohibited by law, the Contractor expressly agrees not to make and

...

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; hereby waives any Claim for damages for delay, including, but not limited to, those resulting from increased labor or material costs; directions given or not given by the Owner or Engineer, including scheduling and coordination of the work; the Engineer's preparation of drawings and specifications or review of shop drawings and requests for instruction(s); or, on account of any delay, obstruction, or hindrance for any cause whatsoever by the~~

...

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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Owner or Engineer, or any other contractor on this Project, whether or not foreseeable or anticipated. The Contractor agrees that its sole right and remedy therefore shall be an extension of time if appropriate. IT IS EMPHASIZED THAT NO MONETARY RECOVERY MAY BE OBTAINED BY THE CONTRACTOR FOR DELAY AGAINST THE OWNER OR ENGINEER BASED ON ANY REASON AND THAT THE CONTRACTOR'S SOLE REMEDY, IF APPROPRIATE, IS ADDITIONAL TIME.

...

§ 15.2 INITIAL DECISION Initial Decision

...

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall 10.3 and 10.4, may, upon the written request of either the Owner or the Contractor, be referred to the Initial Decision Maker for initial decision. The Architect-Engineer 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-binding dispute resolution~~ of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. ~~rendered~~, provided, with respect to Claims submitted more than one year after payment is due, the decision by the Engineer shall not be a condition precedent to litigation, and the Claim need not be submitted to the Engineer. 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.

...

§ 15.2.3 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~~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.

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§ 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 ~~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~~ 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.

...

§ 15.2.7 Within 10 days of a written request, the Contractor will make available to the Owner or its representative books, records, or other documents in its possession or to which it has access relating to a Claim and shall require its Subcontractors, regardless of tier, and materialmen to do likewise.

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§ 15.3 MEDIATION

...

[Intentionally Omitted]

...

§ 15.4 ARBITRATION

...

[Intentionally Omitted]

...

§ 15.4.4 CONSOLIDATION OR JOINDER

...

[Intentionally Omitted]

...

ARTICLE 16 SPECIAL CONDITIONS

...

§ 16.1 Equal Opportunity

...

~~for mediation of an initial decision at § 15.2.6.1.~~ § 16.1.1 The Contractor shall maintain policies for equal employment opportunity for construction employment. During performance of the Agreement, the Contractor agrees as follows:

...

~~any time, subject to the terms of Section 15.2.6.1.~~ § 16.1.2 The Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to insure that all applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship and on-the-job training.

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~~§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file~~ § 16.1.3 The Contractor will post and keep posted in conspicuous places, for employees and applicants for employment, notices obtained by the Contractor from the New York State Division of Human Rights as set forth in the General Regulations of that Division at 9 NYCRR 466.1(a), such conspicuous places to be as defined in 9 NYCRR 466.1(b), and such other postings as that Division may require with respect to New York State's laws, codes, rules, and regulations governing discrimination in employment.

...

~~for mediation within 60 days~~ § 16.1.4 The Contractor will state in all Solicitations or Advertisements for employees placed by, or on behalf, of the Contractor, that all qualified applicants will be afforded equal employment

opportunities without discrimination because of race, creed, color or national origin.

...

of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. § 16.1.5 The Contractor will comply with provisions of Sections 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the Contractor's books, records and accounts by the Owner, the State Commissioner of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these nondiscrimination clauses and such sections of the Executive Law and Civil Rights Law.

...

§ 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. 16.1.6 The Contractor will send to each Labor Union, or representative of worker, with which it has, or is bound by a collective bargaining or other Agreement or understanding notices obtained from the State Commissioner of Human Rights, advising such Labor Union or representative of the Contractor's Agreement under requirements of this Article. If the Contractor was directed to do so by Owner as Part of the Bid or negotiation of the Agreement, the Contractor shall request such Labor Union or representative to furnish him with a written statement that such Labor Union or representative will not discriminate because of race, creed, color or national origin and that such Labor Union or representative either will affirmatively cooperate within the limits of its legal and contractual authority in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment accordance with the purposes and provisions of these non-discrimination clauses. If such Labor Union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the Owner and State Commissioner of Human Rights of such failure or refusal.

...

§ 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. 16.1.7 The Agreement may be forthwith canceled, terminated or suspended in whole, or in part, by Owner upon the basis of a finding made by the State Division of Human Rights, that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future Contracts made by, or in behalf of, the State, or Authority or Agency of the State, or Housing Authority or an Urban Renewal Agency, or Contracts requiring the approval of the Commissioner of Housing and Community Renewal, until it has satisfied the State Division of Human Rights, that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such findings shall be made by the State Division of Human Rights after conciliation efforts by the Division have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Division, notice thereof has been given to the Contractor, and an opportunity has been afforded by the Contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked immediately of, or in addition to sanction in remedies otherwise provided by law. If the Agreement is canceled or terminated under provisions of this Article, in addition to other rights of Owner provided in the Agreement upon its breach by the Contractor, the Contractor will hold Owner harmless against any additional expenses or costs incurred by Owner in completing the work or in purchasing the services, materials, equipment or supplies contemplated by Agreement and Owner may withhold payments from the Contractor in an amount sufficient for this purpose and recourse may be had against authority on the Performance Bond if necessary.

...

§ 15.3 MEDIATION

...

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution. 16.1.8 The Contractor will include the provisions of this Article in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontractor or purchase order as the State Division of Human Rights or the Owner may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or a vendor, as a result of such direction by the State Division of Human Rights, the Contractor shall promptly so notify the Owner and the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

...

§ 16.2 Waiver of Immunity

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance. 16.2.1 The Contractor hereby agrees to the provisions of Paragraph 139-a and 139-b of the NYS Finance Law and Section 103-a of the NYS General Municipal Law, which require that upon the refusal of a person, when called before a grand jury, head of a State department, temporary State commission or other State agency, or the organized crime task force in the Department of Law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

...

of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from § 16.2.1.1 Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with New York State or any public department, agency or official thereof for goods, work or services, for a period of five years after such refusal.

...

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 § 16.2.1.2 Any and all contracts made with the State of New York, or any public department, agency or official thereof since the effective date of this law, by such person, and by an firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by the State of New York without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the State of New York for goods delivered or work done prior to the cancellation or termination shall be paid.

...

Section 15.3.2, § 16.3 Non-Collusive Clause as Required by NYS General Municipal Law Section 103-d

...

the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. § 16.3.1 Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.

...

§ 15.3.3 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 16.3.2 By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief, the following:

...

in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. § 16.3.2.1 The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competitions, as to any matter relating to such prices with any other bidder or with any competitor.

...

§ 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 16.3.2.2 Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.

...

be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. § 16.3.2.3 No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

...

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. § 16.3.3 A bid shall not be considered for award nor shall any award be made where requirements of this Article have not been complied with; provided however, that in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which set forth in detail the reasons therefore. Where requirements of this Article have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing agent of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee,

determines that such disclosure was not made for the purpose of restricting competition.

...

The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. § 16.3.4 The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, b) has informed prospective customers of proposed, or pending, publication of new or revised price list for such items, or (c) has sold the same items to other customers at the same prices being bids, does not constitute a disclosure within the meaning of this Article.

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§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with 16.3.5 Any bid hereafter made to any political subdivision of the state or any public department, agency official thereof by a corporate bidder for work or services performed or to be performed or good sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

...

§ 16.4 Consent to Suit and Waiver of Privity Defense

...

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 Contractor agrees that it waives the defense of privity of contract as between itself and each Prime Contractor. In the event that an act or omission by a Prime Contractor causes impact, damage or loss in any form to another Prime Contractor, then the Prime Contractor responsible in whole or in part for such impact, damage or loss agrees it is directly responsible and liable to the injured Prime Contractor. Both the injured Prime Contractor and the Prime Contractor responsible in whole or in part for such injury agree that this waiver of the defense or privity of contract permits and requires the injured Prime Contractor to commence an action or suit directly against the responsible Prime Contractor. The Owner and Engineer shall not be parties to such suit. Each Prime Contractor waives and relinquishes any right and claim as against the Owner, to the extent such claim is caused or contributed to by a Prime Contractor.

...

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. § 16.5 In accordance with Section 109, General Municipal Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract for the Work herein specified, or its right, title, or interest therein, or its power to execute the Contract, to any other person or corporation without the previous consent in writing of the Board of Trustees. If the Contractor, without previous written consent of the Board of Trustees, shall assign, transfer, convey, sublet, or otherwise dispose of the Contract for the Work specified herein, or its power to execute the Contract, to any other person or corporation, the Board of Trustees shall be relieved of and discharged from any and all liability and obligations growing out of the Contract to the Contractor, and to the persons or corporation to which the Contract shall have been assigned, transferred, conveyed, sublet, or otherwise disposed of, and the Contractor, and its assignees, transferees, or sublessees shall forfeit and lose all monies theretofore earned under the Contract, except so much as may be required to pay its employees. The above provisions of this paragraph shall not hinder, prevent, or affect any assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.

...

ARTICLE 17 NEW YORK STATE LABOR LAW REQUIREMENTS

...

§ 17.1 Working Hours

...

~~§ 15.4.2 The award rendered by the arbitrator~~ 17.1.1 The Contractor specifically agrees as required by the New York State Labor Law ("Labor Law"), Sections 220 and 220-d, as amended, that:

...

~~or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~ 1 No laborer, worker, or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or any part of the work included in the Contract Documents shall be permitted or required to work more than eight hours in any one calendar day or more than five (5) days in any one week, except to the extent permitted in the case of extraordinary emergencies described in the Labor Law.

...

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional~~ 2 The wages to be paid to each laborer, worker, or mechanic in the employ of the Contractor, Subcontractor, or other person doing or contracting to do all or any part of the work included in the Contract Documents for a legal day's work shall be not less than the prevailing rate of wages as defined by the Labor Law.

...

~~person or entity duly consented to by parties~~ 3 Each laborer, workman or mechanic employed by the Contractor, a Subcontractor, or other person doing or contracting to do all or any part of the work included in the Contract Documents shall be provided the supplements required by Article 8 of the Labor Law.

...

~~to the Agreement shall be specifically enforceable under applicable law~~ 4 The minimum hourly rate of wage to be paid shall be not less than that stated in the General Conditions, and shall be as designated by the industrial Commissioner.

...

5 The Contractor's and any Subcontractor's or other person's filing of payrolls in any court having jurisdiction thereof, a manner prescribed by subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to the to the Owner's payment of any sums due and owing to the Contractor, Subcontractor or other party for work done on or with respect to the Project.

...

~~§ 15.4.4 CONSOLIDATION OR JOINDER~~ 17.2 Wage Rates

...

~~§ 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~~ **17.2.1** The Contractor specifically agrees, as required by the Labor Law, that the Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

...

.1 the prevailing wage rates as provided in Labor Law Section 220(3) as amended, or,

...

provided that (1) .2 the minimum wage rates as provided in Labor Law Section 220-d, as amended.

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~~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) § 17.2.2~~ The Contractor shall comply with Prevailing Wage Rates as issued by the State of New York Department of Labor for the location and duration of this Project. Current wage rates for this project are included in the Project Manual as part of the Contract Documents. The Contractor is responsible to regularly review "Prevailing Wage Schedules/Updates" available on the "Prevailing Wage/Public Work" link on State of New York Department of Labor "Business in New York" web page (www.labor.state.ny.us) to identify and implement any applicable changes to Prevailing Wage Rates during the Project.

...

~~the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~ **§ 17.2.3** The Contractor shall comply with all the requirements of the Labor Law Section 220-a, as amended, regarding mandatory submission of certified payroll records, which shall be included with each application for payment.

...

§ 17.3 Anti-Discrimination

...

~~§ 15.4.4.2~~ Either party, at its sole discretion, may include by joinder persons **17.3.1** The Contractor specifically agrees, as required by the provisions of Section 220e of the Labor Law, as amended, that:

...

~~or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded.~~ **.1** In the hiring of employees for the performance of work under the Contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall be reason of race, creed, color, sexual orientation, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

...

~~in arbitration, provided that the party sought to.~~ **.2** No contractor, subcontractor, nor any person on its behalf, shall in any manner, discriminate or intimidate any employee hired for the performance of work under the contract on account of race, creed, color, sexual orientation, or national origin.

...

~~be joined consents in writing to such joinder. Consent to arbitration involving an additional person~~

.3 There may be deducted from the amount payable to the Contractor by the Owner under the contract a penalty at fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract; and

...

~~or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in .4~~ The Contract may be canceled or terminated by the Owner, and all monies due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract.

...

ARTICLE 18 GENERAL MUNICIPAL LAW REQUIREMENTS OF THE STATE OF NEW YORK

...

§ 18.1 Payment of Contractors and Subcontractors

...

~~the written consent.~~ § 18.1.1 The Contractor specifically agrees it is bound by Section 106b of the New York General Municipal Law.

...

ARTICLE 19 SPECIFIC CONFORMANCE TO THE LAWS OF THE STATE OF NEW YORK

...

§ 15.4.4.3 19.1 Statutory Requirements

...

~~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~~ § 19.1.1 The parties agree that each is bound to the provisions of the laws of the State of New York governing bidding and contracting for public improvement projects, including but not limited to applicable provisions of the General Obligations Law, Labor Law, and General Municipal Law. To the extent any provisions in the Contract Documents conflict with any provisions of New York Law, the statutory provisions shall prevail and the conflicting provisions in the Contract Documents shall be deemed to conform to the statutory provisions.

...

~~of joinder and consolidation as the Owner and Contractor under this Agreement.~~ § 19.1.2 To the extent the laws of the State of New York governing bidding and contracting for public improvement projects mandate inclusion of specific terms in contracts for such improvements, but which are not already included in these General Conditions, such terms shall be deemed incorporated into these General Conditions.



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 11:38:36 ET on 01/02/2019 under Order No. 7670529898 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)